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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD**

**Letter dated 21 March 2002 from the Permanent Mission of Azerbaijan to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights**

I have the honour to transmit herewith the information of the Government of the Republic of Azerbaijan entitled "KHOJALY TRAGEDY: Evidence from independent sources".

I would be grateful if you could circulate the present letter and the attached information* as an official document of the fifty-eighth session of the Commission on Human Rights under item 9 of the agenda.

(Signed): Murad N. NAJAFOV
Chargé d'affaires a.i.

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# KHOJALY TRAGEDY

*Evidence from independent sources*

Over the night from 25 to 26 February 1992 Armenian armed forces with support of the infantry guards regiment No 366 of the former Soviet Union implemented the capture of the Khojaly city situated in the Nagorno-Karabakh region of Azerbaijan.

The population (about 2500 people) remained in the city were forced to leave their houses in the hope to find the way to the nearest place mainly populated by Azerbaijanis.

But these plans have failed. Invaders destroyed Khojaly and with particular brutality implemented carnage over the peaceful population of the city.

Brutal annihilation of hundreds of blameless inhabitants of Khojaly was one of the most heinous crimes against the people of Azerbaijan. The armed forces of Armenia and mercenary units spared virtually none of those who had been unable to flee Khojaly and the surrounding area. As a result of genocide in Khojaly, 613 persons were killed and 1,275 peaceful inhabitants taken hostage. The fate of 150 persons remains unknown to this day. In the course of the tragedy 487 peaceful inhabitants were more or less severely maimed. Among those killed were 106 women, 83 children and 70 elderly people. The maimed included 76 children not yet of age. 6 families were completely wiped out, 26 children lost both parents, and 130 children one of their parents. Of those who perished, 56 persons were killed with especial cruelty: by burning alive, scalping, beheading, gouging out of eyes, and bayoneting of pregnant women in the abdomen.

At the same time, Armenia denies its responsibility for crimes committed against the population of Khojaly, airily falsifying facts and sharing own interpretations of them, which deviate not only from reality but also from elementary logic. In this regard the «truths» about the events in Khojaly, as set out in document E/CN.4/2001/155, circulated by the request of the Permanent Representative of Armenia at the fifty-seventh session of the Commission on Human Rights, represent yet another an attempt to mislead the world community. Nevertheless, even the subtlest propaganda will never manage to disprove the facts that speak of a situation diametrically opposite to that represented by the Armenian side.

The falsification, contained in document E/CN.4/2001/155, is not a single attempt of Armenia to decline responsibility for crimes in Khojaly. In this regard the following excerpts from the letter by Holly Cartner, Executive Director of Human Rights Watch/Helsinki, of 24 March 1997 addressed to Alexander Arzoumanian, Minister for Foreign Affairs of the Republic of Armenia, attract particular attention:

«As Executive Director of Human Rights Watch/Helsinki (formerly Helsinki Watch), I wish to respond to the March 3 Ministry of Foreign Affairs statement regarding the 1992 slaughter of Azeri civilians in the town of Khojaly in Nagorno Karabakh. In it, the Ministry argues that the Popular Front of Azerbaijan was responsible for the civilian deaths, supporting this argument by referring to an interview with former President Ayaz Mutalibov and, incredibly, to a 1992 report by our organization. The report, Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh, documents violations of humanitarian law in the conflict committed by both Azerbaijani and Karabakh Armenian forces. Neither our overview and version of the events, nor the individual interviews with Azeri refugees from Khojaly and other villages in Nagorno Karabakh published in the report could possibly support the notion that Azerbaijani forces willfully prevented the evacuation of civilians or that they shot their own citizens. We are deeply distressed that the Ministry has, wittingly or unwittingly, linked our report to views which we reject and which our report does not reflect.

Yet we place direct responsibility for the civilian deaths with Karabakh Armenian forces. Indeed, neither our report nor that of Memorial includes any evidence to support the argument that Azerbaijani forces obstructed the flight of, or fired on Azeri civilians.

We welcome the use of our reports by governments and intergovernmental organizations, and we sincerely hope that there will be no further misrepresentation regarding the contents of our 1992 report».

Human rights protection organizations and mass media have also reported about the events in Khojaly. The reports given below represent independent and impartial views with respect to the tragedy of Khojaly.

**Azerbaijan publishing house, Baku, 1992**

## KHOJALY – THE LAST DAY

In the words of the journalist Chingiz Mustafaev, among the dead were «... dozens upon dozens of children between 2 and 15 years old, women and old people, in most cases shot at pointblank range in the head. The position of the bodies indicated that the people had been killed in cold blood, calculatedly, without any sign of a struggle or of having tried to escape. Some had been taken aside and shot singly; many had been killed as whole families at once. Some corpses displayed several wounds, one of which was invariably in the head, suggesting that the wounded had been finished off. Some children were found with severed ears; the skin had been cut from the left side of an elderly woman's face; and men had been scalped. There were corpses that had clearly been robbed. The first time we arrived at the scene of the shootings of 28 February, accompanied by two military helicopters, we saw from the air an open area about one kilometer across which was strewn with corpses almost everywhere ...».

An inhabitant of Khojaly, Djanan Orudjev, also provided information on the many victims, chiefly women and children. His 16-year-old son was shot, and his 23-year-old daughter with her twin children and another, 18-year-old daughter who was pregnant, were taken hostage.

Saria Talybova, who witnessed the bloody tragedy as it unfolded, watched as four Meskhetian Turks, refugees from Central Asia, and three Azerbaijanis were beheaded on the grave of an Armenian soldier, and children were tortured and killed before their parents' eyes; two Azerbaijanis in national army uniform had their eyes put out with screwdrivers.

The organized nature of the extermination of the people of Khojaly was further evident from the fact that the peaceful inhabitants who fled the town in desperation to save their lives were killed outside it in previously prepared ambushes. For example, Elman Mamedov, chief of administration in Khojaly, reported that a large group of people who had left Khojaly came under heavy fire from Armenian light and heavy machine-guns and armoured personnel carriers near the village of Nakhichevanik. Another resident of Khojaly, Sanubar Alekperova, said she would never forget the mountains of corpses of women, children and old people near Nakhichevanik, where they fell into an ambush: in the carnage, her mother and her two daughters, Sevinzh and Khidzhran, were killed and she herself was wounded. Faced with this mass shooting-down of unarmed people, some of the group made for the village of Gyulably, but there the Armenians took some 200 people hostage. Among them was Dzhamil Mamedov; the Armenians tore out his nails, beat him about the legs and head and took away his grandson, and his wife and daughter vanished without trace.

«I had heard a lot about wars, about the cruelty of the Fascists, but the Armenians were worse, killing five- and six-year-old children, killing innocent civilians», said a French journalist, Jean-Yves Junet, who visited the scene of this mass murder of women, old people, children and defenders of Khojaly.

One of the French journalist's Russian colleagues, V.Belykh, a correspondent for the newspaper *Izvestia*, reported seeing bodies with their eyes gouged out or ears cut off and bodies that had been scalped or beheaded.

The head of the Azerbaijan Defence Ministry's medical service, Khanlar Hajiyev was horrified by the evidence of savage reprisals against the inhabitants of Khojaly brought before him: a guardsman with his intestines hanging out, people with frostbite, a child whose leg had been torn off by heavy machine-gun fire, a girl whose face had been slashed with a knife.

Major Leonid Kravets reported that he had «personally seen about 200 bodies» and that with him had been a local policeman who, «when he saw his four year-old son lying among the dead with his head split open, went out of his mind with grief».

*The Washington Post*, 28 February 1992

## NAGORNO-KARABAKH VICTIMS BURIED IN AZERBAIJANI TOWN -- REFUGEES CLAIM HUNDREDS DIED IN ARMENIAN ATTACK

*By Thomas GOLTZ, Agdam, Azerbaijan, 27 February*

Officials of the main mosque in this town just east of the embattled enclave of Nagorno-Karabakh said they buried 27 bodies today, brought from an Azerbaijani town inside the enclave that was captured Wednesday by Armenian militiamen.

Refugees fleeing the fighting in Khojaly, a town of 6,000 northeast of the enclave's capital, Stepanakert, claimed that up to 500 people, including women and children, were killed in the attack. No independent estimate of deaths was available here. The Agdam mosque's director, Said Sadikov Muan, said refugees from Khojaly had registered the names of 477 victims with his mosque since Wednesday.

Officials in Baku, the capital of Azerbaijan, estimated the deaths in Khojaly at 100, while Armenian officials in their capital, Yerevan, said only two Azerbaijanis were killed in the attack. An official from Baku said here that his government fears Azerbaijanis would turn against it if they knew how many had been killed.

Of seven bodies seen here today, two were children and three were women, one shot through the chest at what appeared to be close range. Another 120 refugees being treated at Agdam's hospital include many with multiple stab wounds.

The Armenians who attacked Khojaly Tuesday night «were shooting, shooting, shooting», said Raisa Aslanova, who reached Agdam Wednesday night. She said her husband and a son-in-law were killed and her daughter was missing.

Among the refugees who fled here over the mountains from Nagorno-Karabakh were two Turkmen soldiers from former Soviet Interior Ministry forces who had taken refuge in Khojaly after deserting from their unit last Friday because, they said, Armenian non-commissioned officers had beaten them «for being Muslims».

The two deserters claimed their former unit, the 366th Division, was supporting the Armenian militiamen who captured Khojaly. They said they tried to help women and children escape. «We were bringing a group through the mountains when the Armenians found us and opened fire», said Agamehmet Mutif, one of the deserters. «Twelve were killed».

*The Independent*, 29 February 1992

*By Helen Womack*

Elif Kaban, a Reuter correspondent in Agdam, reported that after a massacre on Wednesday, Azeris were burying scores of people who died when Armenians overran the town of Khojaly, the second-biggest Azeri settlement in the area. «The world is turning its back on what's happening here. We are dying and you are just watching», one mourner shouted at a group of journalists.

*The Sunday Times*, 1 March 1992

## ARMENIAN SOLDIERS MASSACRE HUNDREDS OF FLEEING FAMILIES

*By Thomas Goltz, Agdam, Azerbaijan*

Survivors reported that Armenian soldiers shot and bayoneted more than 450 Azeris, many of them women and children. Hundreds, possibly thousands, were missing and feared dead.

The attackers killed most of the soldiers and volunteers defending the women and children. They then turned their guns on the terrified refugees. The few survivors later described what happened: «That's when the real slaughter began», said Azer Hajiev, one of three soldiers to survive. «The Armenians just shot and shot. And then they came in and started carving up people with their bayonets and knives».

«They were shooting, shooting, shooting», echoed Rasia Aslanova, who arrived in Agdam with other women and children who made their way through Armenian lines. She said her husband, Kayun, and a son-in-law were massacred in front of her. Her daughter was still missing.

One boy who arrived in Agdam had an ear sliced off.

The survivors said 2000 others, some of whom had fled separately, were still missing in the gruelling terrain; many could perish from their wounds or the cold.

By late yesterday, 479 deaths had been registered at the morgue in Agdam, and 29 bodies had been buried in the cemetery. Of the seven corpses I saw awaiting burial, two were children and three were women, one shot through the chest at point blank range.

Agdam hospital was a scene of carnage and terror. Doctors said they had 140 patients who escaped slaughter, most with bullet injuries or deep stab wounds.

Nor were they safe in Agdam. On Friday night rockets fell on the city which has a population of 150,000, destroying several buildings and killing one person.

*The Times*, 2 March 1992

## CORPSES LITTER HILLS IN KARABAKH

*Anatol Lieven comes under fire while flying to investigate the mass killings of refugees by Armenian troops*

As we swooped low over the snow-covered hills of Nagorno-Karabagh we saw the scattered corpses. Apparently, the refugees had been shot down as they ran. An Azerbaijani film of the places we flew over, shown to journalists afterwards, showed dozens of corpses lying in various parts of the hills.

The Azerbaijanis claim that as many as 1000 have died in a mass killing of Azerbaijanis fleeing from the town of Khodjaly, seized by Armenians last week. A further 4,000 are believed to be wounded, frozen to death or missing.

The civilian helicopter's job was to land in the mountains and pick up bodies at sites of the mass killings.

The civilian helicopter picked up four corpses, and it was during this and a previous mission that an Azerbaijani cameraman filmed the several dozen bodies on the hillsides.

Back at the airfield in Agdam, we took a look at the bodies the civilian helicopter had picked up. Two old men and small girl were covered with blood, their limbs contorted by the cold and rigor mortis. They had been shot.

***The Washington Times*, 2 March 1992**

## ARMENIAN RAID LEAVES AZERIS DEAD OR FLEEING

About 1,000 of Khojaly's 10,000 people were massacred by the Armenian Army in Tuesdays attack. Azerbaijani television showed truckloads of corpses being evacuated from the Khocaly area.

***The New York Times*, Tuesday, 3 March 1992**

## MASSACRE BY ARMENIANS

Agdam, Azerbaijan, March 2 (Reuters) - Fresh evidence emerged today of a massacre of civilians by Armenian militants in Nagorno-Karabakh, a predominantly Armenian enclave of Azerbaijan.

**Scalping Reported**

Azerbaijani officials and journalists who flew briefly to the region by helicopter brought back three dead children with the back of their heads blown off. They said shooting by Armenians has prevented them from retrieving more bodies.

«Women and children have been scalped», said Assad Faradshev, an aide to Nagorno-Karabakh's Azerbaijani Governor. «When we began to pick up bodies, they began firing at us».

The Azerbaijani militia chief in Agdam, Rashid Mamedov, said: «The bodies are lying there like flocks of sheep. Even the fascists did nothing like this».

**Truckloads of Bodies**

Near Agdam on the outskirts of Nagorno-Karabakh, a Reuters photographer, Frederique Lengaigne, said she had seen two trucks filled with Azerbaijani bodies.

«In the first one I counted 35, and it looked as though there were as many in the second», she said. «Some had their head cut off, and many had been burned. They were all men, and a few had been wearing khaki uniforms».

*The Times*, 3 March 1992

## MASSACRE UNCOVERED

*By Anatol LIEVEN*

More than sixty bodies, including those of women and children, have been spotted on hillsides in Nagorno-Karabakh, confirming claims that Armenian troops massacred Azeri refugees. Hundreds are missing.

Scattered amid the withered grass and bushes along a small valley and across the hillside beyond are the bodies of last Wednesday's massacre by Armenian forces of Azerbaijani refugees.

In all, 31 bodies could be counted at the scene. At least another 31 have been taken into Agdam over the past five days. These figures do not include civilians reported killed when the Armenians stormed the Azerbaijani town of Khodjaly on Tuesday night. The figures also do not include other as yet undiscovered bodies

Zahid Jabarov, a survivor of the massacre, said he saw up to 200 people shot down at the point we visited, and refugees who came by different routes have also told of being shot at repeatedly and of leaving a trail of bodies along their path. Around the bodies we saw were scattered possessions, clothing and personnel documents. The bodies themselves have been preserved by the bitter cold which killed others as they hid in the hills and forest after the massacre. All are the bodies of ordinary people, dressed in the poor, ugly clothing of workers.

Of the 31 we saw, only one policeman and two apparent national volunteers were wearing uniform. All the rest were civilians, including eight women and three small children. Two groups, apparently families, had fallen together, the children cradled in the women's arms.

Several of them, including one small girl, had terrible head injuries: only her face was left. Survivors have told how they saw Armenians shooting them point blank as they lay on the ground.

**BBC1 Morning News at 07.37, Tuesday, 3 March 1992**

BBC reporter was live on line and he claimed that he saw more than 100 bodies of Azeri men, women and children as well as a baby who are shot dead from their heads from a very short distance.

**BBC1 Morning News at 08:12, Tuesday, 3 March 1992**

Very disturbing picture has shown that many civilian corpses who were picked up from mountain. Reporter said he, cameraman and Western Journalists have seen more than 100 corpses, who are men, women, children, massacred by Armenians. They have been shot dead from their heads as close as 1 meter. Picture also has shown nearly ten bodies (mainly women and children) are shot dead from their heads. Azerbaijan claimed that more than 1000 civilians massacred by Armenian forces.

*The Washington Times*, 3 March 1992

## ATROCITY REPORTS HORRIFY AZERBAIJAN

*By Brian KILLEN Agdam, Azerbaijan*

Dozens of bodies lay scattered around the killing fields of Nagorno-Karabakh yesterday, evidence of the worst massacre in four years of fighting over the disputed territory.

Azeri officials who returned from the scene to this town about nine miles away brought back three dead children, the backs of their heads blown off.

At the local mosque, six other bodies lay stretched out, fully clothed, with their limbs frozen in the positions in which they were killed. Their faces were black from the cold.

«Telman!» screamed one woman, beating her breast furiously over the body of her dead father, who lay on his back with his stiff right arm jutting into the air.

Those who returned from a brief visit by helicopter to Khojaly, captured by the Armenians last week, said they had seen similar sights--only more. One Russian journalist said he had counted about 30 bodies within a radius of 50 yards from where the helicopter landed.

Armenia has denied atrocities or mass killings of Azeris after its well-armed irregulars captured Khojaly, the second-biggest Azeri town in Nagorno-Karabakh, last Wednesday. Azerbaijan says 1,000 people were killed.

«Women and children had been scalped», said Assad Faradzhev, an aide to Karabakh's Azeri governor.

Mr. Faradzhev said the helicopter, bearing Red Cross markings and escorted by two MI-24 helicopters of the former Soviet army, succeeded in picking up only the three children before Armenian militants opened fire. «When we began to pick up bodies, they started firing at us», he said.

Mr. Faradzhev said they were on the ground for only 15 minutes.

«The combat helicopters fired red flares to signal that Armenians were approaching and it was time to leave. I was ready to blow myself up if we were captured», he said pointing to a grenade in his coat pocket.

Reuters photographer Frederique Lengaigne saw two trucks full of Azeri corpses near Agdam.

«In the first one, I counted 35, and it looked as though there were almost as many in the second. Some had their heads cut off and many had been burned. They were all men, and a few had been wearing khaki uniforms», she said.

In Agdam's mosque, the dead bodies lay on mattresses under a naked light bulb. People screamed insults at Azerbaijan's president, Ayaz Mutalibov, saying he had not done enough to protect Karabakh's Azeri population.

Hundreds of people crowded outside chanting Islamic prayers. Some wept uncontrollably and collapsed near their dead relatives, brought to the town by truck only minutes earlier.

Chilling film of dozens of stiffened corpses scattered over a snowy hillside backed accounts of the slaughter of women and children sobbed out by refugees who made it safely out of the disputed Caucasus enclave.

Azerbaijani television showed pictures of one truckload of bodies brought to the Azeri town of Agdam, some with their faces apparently scratched with knives or their eyes gouged out. One little girl had her arms stretched out as if crying for help.

«The bodies are lying there like flocks of sheep. Even the fascists did nothing like this», said Agdam militia commander Rashid Mamedov, referring to the Nazi invaders in World War II.

«Give us help to bring back the bodies and show people what happened», Karabakh Gov. Musa Mamedov pleaded by telephone to the Soviet army base in Gyandzha, Azerbaijan's second-largest city.

A helicopter pilot who took cameramen and Western correspondents over the area reported seeing some corpses lying around Khojaly and dozens more near the Askeran Gap, a mountain pass only a few miles from Agdam.

*The New York Times*, 3 March 1992

## MASSACRE BY ARMENIANS BEING REPORTED

Agdam, Azerbaijan, March 2 (Reuters)--The last of the former Soviet troops in the Caucasus enclave of Nagorno-Karabakh began pulling out today as fresh evidence emerged of a massacre of civilians by Armenian militants.

The Itar-Tass press agency said the 366th Motorized Infantry Regiment had started its withdrawal, in effect removing the last frail buffer separating the region's two warring ethnic groups, Armenians and Azerbaijanis.

The two sides made no attempt to interfere, it added.

Nagorno-Karabakh is within the Republic of Azerbaijan, but most of its population is Armenian.

**Shelling in town reported**

The Azerbaijani press agency Azerinform reported fresh Armenian missile fire on the Azerbaijani-populated town of Shusha in Nagorno-Karabakh on Sunday night. It said several people had been wounded in another attack, on the settlement of Venjali, early today.

The Republic of Armenia reiterated denials that its militants had killed 1,000 people in the Azerbaijani-populated town of Khojaly last week and had massacred men, women and children fleeing the carnage across snow-covered mountain passes.

But dozens of bodies scattered over the area lent credence to Azerbaijani reports of a massacre.

Azerbaijani officials and journalists who flew briefly to the region by helicopter brought back three dead children with the backs of their heads blown off. They said shooting by Armenians had prevented them from retrieving more bodies.

«Women and children had been scalped», said Assad Faradzhev, an aide to Nagorno-Karabakh's Azerbaijani Governor. «When we began to pick up bodies, they began firing at us».

The Azerbaijani militia chief in Agdam, Rashid Mamedov, said: «The bodies are lying there like flocks of sheep. Even the fascists did nothing like this».

**Two trucks filled with bodies**

Near Agdam on the outskirts of Nagorno-Karabakh, a Reuters photographer, Frederique Lengaigne, said she had seen two trucks filled with Azerbaijani bodies.

«In the first one I counted 35, and it looked as though there were almost as many in the second», she said. «Some had their heads cut off, and many had been burned. They were all men, and a few had been wearing khaki uniforms».

Ethnic violence and economic crisis threaten to tear apart the Commonwealth of Independent States, created by 11 former Soviet republics in December. The commonwealth has been powerless in the face of the ethnic hatred rekindled in the age-old dispute between Christian Armenia and Muslim Azerbaijan, which are members.

Four years of fighting in Nagorno-Karabakh have killed 1,500 to 2,000 people. The last week's fighting has been the most savage yet.

The 366th Regiment, based in Stepanakert, the capital of Nagorno-Karabakh, has been caught at the center of fighting in which at least three of its soldiers were killed late last month.

Speaking to his Parliament in Yerevan, the Armenian capital, President Levon Ter-Petrosyan criticized the withdrawal from the enclave of the commonwealth's last troops.

«This regiment, though not involved in military operations, was a stabilizing factor», Mr. Ter-Petrosyan said.

***The Boston Globe*, 3 March 1992**

*By Paul QUINN-JUDGE, Baku, Azerbaijan*

Azerbaijan charged yesterday that Armenian militants massacred men, women and children after forcing them from a town in Nagorno-Karabagh last week.

Azerbaijani officials said 1000 Azeris had been killed in town of Khojaly and that Armenian fighters then slaughtered men, women and children fleeing across snow-covered mountain passes.

Armenian officials disputed the death toll and denied the massacre report.

Journalists on the scene said it was difficult to say exactly how many people had been killed in surrounding areas. But a Reuters photographer said he saw two trucks filled with Azeri corpses, and a Russian journalist reported massacre sites elsewhere in the area.

Azeri officials and journalists who flew briefly to the region by helicopter recovered the bodies of three dead children who had been shot in the head, Reuters said, but Armenians prevented them from retrieving more bodies.

...

There were growing signs that many civilians were killed during the capture of Khojaly.

Footage shot by Azerbaijan Television Sunday showed about 10 dead bodies, including several women and children, in an improvised morgue in Agdam. An editor at the main television station in Baku said 180 bodies had been recovered so far. A helicopter flying over the vicinity is reported to have seen other corpses, while the BBC quoted a French photographer who said that he had counted 31 dead, including women and children, some who appeared as though they were shot in the head at close range.

Meanwhile, the mayor of Khojaly, Elmar Mamedov, said at a news conference in Baku that 1000 people had died in the attack, 200 more were missing, 300 had been taken hostage, and 200 were injured. Armored personnel carriers of the 366th spearheaded the attack, Mamedov charged, and cleared the way for Armenian irregulars...

***The Age*, Melbourne, 6 March 1992**

*By Helen WOMACK, Agdam, Azerbaijan, Thursday*

The exact number of victims is still unclear, but there can be little doubt that Azeri civilians were massacred by Armenian Army in the snowy mountains of Nagorno-Karabakh last week.

Refugees from the enclave town of Khojaly, sheltering in the Azeri border town of Agdam, give largely consistent accounts of how Armenians attacked their homes on the night of 25 February, chased those who fled and shot them in the surrounding forests. Yesterday, I saw 75 freshly dug graves in one cemetery in addition to four mutilated corpses we were shown in the mosque when we arrived in Agdam late on Tuesday. I also saw women and children with bullet wounds in a makeshift hospital in a string of railway carriages.

Khojaly, an Azeri settlement in the enclave mostly populated by Armenians, had a population of about 6000. Mr. Rashid Mamedov, Commander of Police in Agdam, said only about 500 escaped to his town. «So where are the rest?» Some might have taken prisoner, he said, or fled. Many bodies were still

lying in the mountains because the Azeris were short of helicopters to retrieve them. He believed more than 1000 had perished, some of cold in temperatures as low as minus 10 degrees.

When Azeris saw the Armenians with a convoy of armoured personnel carriers, they realized they could not hope to defend themselves, and fled into the forests. In the small hours, the massacre started.

Mr. Nasiru, who believes his wife and two children were taken prisoner, repeated what many other refugees have said - that troops of the former Soviet army helped the Armenians to attack Khojaly. «It is not my opinion, I saw it with my own eyes».

*The New York Times*, 6 March 1992

## A FINAL GOODBY IN AZERBAIJAN

[Photo by Associated Press]: «At a cemetery in Agdam, Azerbaijan, family members and friends grieved during the burial of victims massacred by the Armenians in Nagorno-Karabagh. Chingiz Iskandarov, right, hugged the coffin containing the remains of his brother, one of the victims. A copy of Koran lay atop the coffin».

*The Washington Post*, 6 March 1992

## FINAL EMBRACE

[Photo by Associated Press]: «Chingiz Iskenderov, right, weeps over coffin holding the remains of his brother as other relatives grieve at an Azarbaijani cemetery yesterday amid burial of victims killed by Armenians in Nagorno-Karabagh».

*The Sunday Times*, 8 March 1992

*Thomas Goltz, the first to report the massacre by Armenian soldiers, reports from Agdam.*

Khojaly used to be a barren Azeri town, with empty shops and treeless dirt roads. Yet it was still home to thousands of Azeri people who, in happier times, tended fields and flocks of geese. Last week it was wiped off the map.

As sickening reports trickled in to the Azerbaijani border town of Agdam, and the bodies piled up in the morgues, there was little doubt that Khojaly and the stark foothills and gullies around it had been the site of the most terrible massacre since the Soviet Union broke apart.

I was the last Westerner to visit Khojaly. That was in January and people were predicting their fate with grim resignation. Zumrut Ezoya, a mother of four on board the helicopter that ferried us into the town, called her community «sitting ducks, ready to get shot». She and her family were among the victims of the massacre by the Armenians on February 26.

«The Armenians have taken all the outlying villages, one by one, and the government does nothing», Balakisi Sakikov, 55, a father of five, said. «Next they will drive us out or kill us all», said Dilbar, his wife. The couple, their three sons and three daughters were killed in the massacre, as were many other people I had spoken to.

«It was close to the Armenian lines we knew we would have to cross. There was a road, and the first units of the column ran across then all hell broke loose. Bullets were raining down from all sides, we had just entered their trap».

The Azeri defenders picked off one by one. Survivors say that Armenian forces then began a pitiless slaughter, firing at anything moved in the gullies. A video taken by an Azeri cameraman, wailing and crying as he filmed body after body, showed a grizzly trail of death leading towards higher, forested ground where the villagers had sought refuge from the Armenians.

«The Armenians just shot and shot and shot», said Omar Veyselov, lying in hospital in Agdam. «I saw my wife and daughter fall right by me»

People wandered through the hospital corridors looking for news of the loved ones. Some vented their fury on foreigners: «Where is my daughter, where is my son?» wailed a mother. «Raped. Butchered. Lost».

***Le Mond*, Paris, 14 March 1992**

The foreign journalist in Aghdam saw the women and three scalped children with the pulled off nails among the killed people. This is not «Azerbaijani propaganda», but reality.

***Newsweek*, 16 March 1992**

**THE FACE OF A MASSACRE**

*By Pascal Privat with Steve Le Vine in Moscow*

Azerbaijan was a charnel house again last week: a place of mourning refugees and dozens of mangled corpses dragged to a makeshift morgue behind the mosque. They were ordinary Azerbaijani men, women and children of Khojaly, a small village in war-torn Nagorno-Karabakh overrun by Armenian forces on Feb. 25-26. Many were killed at close range while trying to flee; some had their faces mutilated, others were scalped. While the victims' families mourned.

***Time*, 16 March 1992**

**MASSACRE IN KHOJALY**

*By Jill SMOLOWE*
*Reported by Yuri ZARAKHOVICH/Moscow*

While the details are argued, this much is plain: something grim and unconscionable happened in the Azerbaijani town of Khojaly two weeks ago. So far, some 200 dead Azerbaijanis, many of them mutilated, have been transported out of the town tucked inside the Armenian-dominated enclave of Nagorno-Karabakh for burial in neighboring Azerbaijan. The total number of deaths - the Azerbaijanis claim 1,324 civilians have been slaughtered, most of them women and children - is unknown...

Videotapes circulated by the Azerbaijanis include images of defaced civilians, some of them scalped, others shot in the head...

*Svoboda*, 12 June 1992

## A TRAGEDY WHOSE PERPETRATORS CANNOT BE VINDICATED

*A report by Memorial, the Moscow-based human rights group, on the massive violations of human rights committed in the taking of Khojaly on the night of 25-26 February 1992 by armed units*

The report of Memorial on the massive violations of human rights committed in the taking of Khojaly says of the civilians' flight from the town: «The fugitives fell into ambushes set by the Armenians and came under fire. Some of them nonetheless managed to get into Agdam; others, mostly women and children (exactly how many it is impossible to say), froze to death while lost in the mountains; others still, according to testimony from those who reached Agdam, were taken prisoner near the villages of Pirdzhamal and Nakhichevanik. There is evidence from inhabitants of Khojaly who have already been exchanged that some of the prisoners were shot ... Around 200 bodies were brought into Agdam in the space of four days. Scores of the corpses bore traces of profanation. Doctors on a hospital train in Agdam noted no less than four corpses that had been scalped and one that had been beheaded. State forensic examinations were carried out in Agdam on 181 corpses (130 male and 51 female, including 13 children): the findings were that 151 people had died from gunshot wounds, 20 from shrapnel wounds and 10 from blows inflicted with a blunt instrument ... The records of the hospital train in Agdam, through which almost all the injured inhabitants or defenders of Khojaly passed, refer to 598 cases of wounds or frostbite (cases of frostbite being in the majority) and one case of live scalping».

*The Independent*, London, 12 June 1992

*By Frederique LENGAIGNE/Reuter*

Aref Sadikov sat quietly in the shade of a cafe-bar on the Caspian Sea esplanade of Baku and showed a line of stitches in his trousers, torn by an Armenian bullet as he fled the town of Hojali just over three months ago, writes Hugh Pope.

«I'm still wearing the same clothes, I don't have any others», the 51-year-old carpenter said, beginning his account of the Hojali disaster. «I was wounded in five places, but I am lucky to be alive».

Mr. Sadikov and his wife were short of food, without electricity for more than a month, and cut off from helicopter flights for 12 days. They sensed the Armenian noose was tightening around the 2,000 to 3,000 people left in the straggling Azeri town on the edge of Karabakh.

«At about 11pm a bombardment started such as we had never heard before, eight or nine kinds of weapons, artillery, heavy machine-guns, the lot», Mr. Sadikov said.

Soon neighbours were pouring down the street from the direction of the attack. Some huddled in shelters but others started fleeing the town, down a hill, through a stream and through the snow into a forest on the other side.

To escape, the townspeople had to reach the Azeri town of Agdam about 15 miles away. They thought they were going to make it, until at about dawn they reached a bottleneck between the two Azeri villages of Nakhchivanik and Saderak.

«None of my group was hurt up to then ... Then we were spotted by a car on the road, and the Armenian outposts started opening fire», Mr. Sadikov said. Mr. Sadikov said only 10 people from his group of 80 made it through, including his wife and militiaman son. Seven of his immediate relations died, including his 67-year-old elder brother.

«I only had time to reach down and cover his face with his hat», he said, pulling his own big flat Turkish cap over his eyes. «We have never got any of the bodies back».

The first groups were lucky to have the benefit of covering fire. One hero of the evacuation, Alif Hajief, was shot dead as he struggled to change a magazine while covering the third group's crossing, Mr Sadikov said.

Another hero, Elman Memmedov, the mayor of Hojali, said he and several others spent the whole day of 26 February in the bushy hillside, surrounded by dead bodies as they tried to keep three Armenian armoured personnel carriers at bay.

As the survivors staggered the last mile into Agdam, there was little comfort in a town from which most of the population was soon to flee.

«The night after we reached the town there was a big Armenian rocket attack. Some people just kept going», Mr. Sadikov said. «I had to get to the hospital for treatment. I was in a bad way. They even found a bullet in my sock».

Victims of massacre: An Azeri woman mourns her son, killed in the Hojali massacre in February (left). Nurses struggle in primitive conditions (centre) to save a wounded man in a makeshift operating theatre set up in a train carriage. Grief-stricken relatives in the town of Agdam (right) weep over the coffin of another of the massacre victims. Calculating the final death toll has been complicated because Muslims bury their dead within 24 hours.

***The Independent*, London, 12 June 1992**

## PAINFUL SEARCH

The gruesome extent of February's killings of Azeris by Armenians in the town of Hojali is at last emerging in Azerbaijan - about 600 men, women and children dead.

The State Prosecutor, Aydin Rasulov, the cheif investigator of a 15-man team looking into what Azerbaijan calls the «Hojali Massacre», said his figure of 600 people dead was a minimum on preliminary findings. A similar estimate was given by Elman Memmedov, the mayor of Hojali. An even higher one was printed in the Baku newspaper *Ordu* in May - 479 dead people named and more than 200 bodies reported unidentified. This figure of nearly 700 dead is quoted as official by Leila Yunusova, the new spokeswoman of the Azeri Ministry of Defence.

Francois Zen Ruffinen, head of delegation of the International Red Cross in Baku, said the Muslim imam of the nearby city of Agdam had reported a figure of 580 bodies received at his mosque from Hojali, most of them civilians. «We did not count the bodies. But the figure seems reasonable. It is no fantasy», Mr. Zen Ruffinen said. «We have some idea since we gave the body bags and products to wash the dead».

Mr. Rasulov endeavours to give an unemotional estimate of the number of dead in the massacre. «Don't get worked up. It will take several months to get a final figure», the 43-year-old lawyer said at his small office.

Mr. Rasulov knows about these things. It took him two years to reach a firm conclusion that 131 people were killed and 714 wounded when Soviet troops and tanks crushed a nationalist uprising in Baku in January 1990.

Officially, 184 people have so far been certified as dead, being the number of people that could be medically examined by the republic's forensic department. «This is just a small percentage of the dead», said Rafiq Youssifov, the republic's chief forensic scientist. «They were the only bodies brought to us. Remember the chaos and the fact that we are Muslims and have to wash and bury our dead within 24 hours».

Of these 184 people, 51 were women, and 13 were children under 14 years old. Gunshots killed 151 people, shrapnel killed 20 and axes or blunt instruments killed 10. Exposure in the highland snows killed the last three. Thirty-three people showed signs of deliberate mutilation, including ears, noses, breasts or

penises cut off and eyes gouged out, according to Professor Youssifov's report. Those 184 bodies examined were less than a third of those believed to have been killed, Mr. Rasulov said.

«There were too many bodies of dead and wounded on the ground to count properly: 470-500 in Hojali, 650-700 people by the stream and the road and 85-100 visible around Nakhchivanik village», Mr. Manafov wrote in a statement countersigned by the helicopter pilot.

«People waved up to us for help. We saw three dead children and one two-year-old alive by one dead woman. The live one was pulling at her arm for the mother to get up. We tried to land but Armenians started a barrage against our helicopter and we had to return»

There has been no consolidation of the lists and figures in circulation because of the political upheavals of the last few months and the fact that nobody knows exactly who was in Hojali at the time - many inhabitants were displaced from other villages taken over by Armenian forces.

***Коммерсантъ*, Moscow, 27 February 2002**

Over the night from 25 to 26 February 1992 the Khojaly town (Nagorny Karabakh), inhabited mainly by Azerbaijanis, was subjected to the massive attack from the Armenian side. The units of the Russian 366th infantry guards regiment took part in the attack. As a result, 613 persons dead, 487 wounded, 1275 imprisoned, 150 persons are missing. The Khojaly events have radically changed the nature of the conflict – afterwards the military operations from both sides have actually turned into ethnic cleansings.

**Human Rights Watch/Helsinki, December 1994**

**SEVEN YEARS OF CONFLICT IN NAGORNO KARABAKH**

According to Human Rights Watch/Helsinki, «the massacre of hundreds of Azeri civilians in Khojali, NKAO, by Karabakh forces with alleged support of the 366th Regiment of the Russian army» was one of the major events characterized the war in 1992.

«In February 1992, Karabakh Armenian forces – reportedly backed by soldiers from the 366th Motor Rifle Regiment of the Russian Army – seized the Azeri-populated town of Khojali... More than 200 civilians were killed in the attack, the largest massacre to date in the conflict».[28]

Footnote: [28] «There are no exact figures for the number of Azeri civilians killed because Karabakh Armenian forces gained control of the area after the massacre. While it is widely accepted that 200 hundred Azeris were murdered, as many as 500-1000 may have died».

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Fifty-eighth session
Agenda item 11(c)

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF:
FREEDOM OF EXPRESSION**

**Note verbale dated 14 March 2002 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights**

The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to Commission on Human Rights document E/CN.4/2002/NGO/30, which includes a written statement by the non-governmental organization called International League for the Rights and Liberation of Peoples (LIDLIP), has the honour to bring the following to the latter's attention.

In essence, the above-mentioned document contains baseless allegations against Turkey which do not deserve a reply. Nevertheless, the Permanent Mission would like to draw the secretariat's attention to one particular point which is believed to constitute a breach of ECOSOC resolution 1996/31, entitled "Consultative relationship between the United Nations and non-governmental organizations".

At the beginning of the document E/CN.4/2002/NGO/30, there is a definition of the so-called historic region of "Pontos" and it is stated that the area concerned is now in Turkey (... the historic region of "Pontos", from Sinope (Sinop) to Trapezous (Trabzon) now in Turkey ...). And then, in the third page of the document, there is a sentence which reads: "In fact, this language [the "Pontos" language] is today illegal in Pontos and in Turkey". This sentence creates the impression that the area referred to as "Pontos" and Turkey are two separate territories. Indeed, the area referred to as "Pontos" is a part of the Black Sea region of Turkey. Thus, the document E/CN.4/2002/NGO/30 is in total disregard of the territorial integrity of Turkey.

The Government of Turkey appreciates the role and the contribution of the NGOs in the field of human rights. However, it is an established fact that the aims and purposes of the NGOs shall be in conformity with the spirit, purposes and the principles of the Charter of the United Nations (Economic and Social Council resolution 1996/31, part 1, paragraph 2), that the NGOs to be accorded special consultative status because of their interest in the field of human rights should pursue the goals of promotion and protection of human rights in accordance with the spirit of the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action (resolution 1996/31, part 3, paragraph 25), and that the NGOs granted consultative status by the Council shall conform at all times to the principles governing the establishment and nature of their consultative relations with the Council (resolution 1996/31, part 8, paragraph 55).

In the light of the above, the Permanent Mission requests the secretariat to take the necessary action with regard to document E/CN.4/2002/NGO/30 which is in contradiction with the principles of the Charter. The Permanent Mission kindly requests the secretariat to contact the NGO concerned with a view to withdrawing document E/CN.4/2002/NGO/30. Such a withdrawal should also be reflected in an official written document of the Commission for Human Rights.

The Permanent Mission would like to state further that, in accordance with the relevant provisions of Economic and Social Council resolution 1996/31, the Government of Turkey reserves the right to take further action regarding the NGO called the International League for the Rights and Liberation of Peoples (LIDLIP).

The Permanent Mission would appreciate if the secretariat would circulate this note verbale as an official document of the fifty-eighth session of the Commission on Human Rights under agenda item 11(c) and also inform the Permanent Mission about the action taken by the secretariat regarding document E/CN.4/2002/NGO/30.

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Fifty-eighth session
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# ORGANIZATION OF THE WORK OF THE SESSION

**Note by the secretariat**

1. On 12 March 2002, the Chairman of the Committee on Non-Governmental Organizations of the Economic and Social Council addressed a letter to the Chairperson of the fifty-seventh session of the Commission on Human Rights drawing the attention of the Commission to the actions recommended by the Committee, one of which was the wider dissemination of a message to the NGO community at large, calling for greater vigilance and observance of established procedures on the relationship between non-governmental organizations in consultative status with the Council and the United Nations.

2. In a reply to that letter, on 20 March 2002, the Chairperson of the fifty-eight session of the Commission on Human Rights informed the Chairman of the Committee on Non-Governmental Organizations that the letter from the Committee had been brought to the attention of concerned NGOs and would be circulated with its annex and the reply as an official document of the fifty-eighth session of the Commission under agenda item 3.

3. The letter and the reply are reproduced in the annex to the present document.*

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* Reproduced as received, in the original language only.

GE.02-11961 (E) 260302

Annex

United Nations Nations Unies

NGO Section
Department of Economic and Social Affairs
One United Nations Plaza, Room DC1-1493
New York, NY 10017, USA
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E-mail : desangosection@un.org

12 March 2002

Dear Ambassador Despouy,

It was a great pleasure for me to have met you on November 5, 2001 in New York. The Committee on NGOs had its resumed session in January last. At its 2001 regular session, the Committee on Non-Governmental Organizations had heard a declaration from the Ambassador from Sri Lanka who deplored that, at the fifty-seventh session of the Commission of Human Rights, members of an organization, whose application for ECOSOC status was not recommended by the Committee, had obtained accreditation from another organization and distributed abusive material regarding his country. In view of the repetition of similar situations, the Permanent representative of Sri Lanka asked the Committee to take proper action on this sensitive issue. Concerns on the same subject were expressed by other delegations.

Having examined the question in depth, the Committee recommended a couple of actions to be taken, one of which is the wider dissemination of a clear message to the NGO community at large, calling for greater vigilance and observance of established procedures on the relationship between non-governmental organizations in consultative status with the Council and the United Nations.

To this end, the Committee requested me, as its Chairman, to suggest certain points that could be used by you, the Chairman of the Commission on Human Rights, while bringing the issue to the attention of the NGOs concerned before the sessions of the Commissions of Human Rights. (see Annex 1 attached)

With the help of the Bureau of the CHR and the efficient assistance of the Geneva UN Secretariat, I am confident that these unfortunate incidents will be avoided in the future.

During my chairmanship of the Committee on NGOs, I have greatly enjoyed collaborating with you, for which I am grateful to you.

Accept, Sir, the assurances of my highest consideration.

Levent Bilman, Chairman
Committee on Non-Governmental Organizations

H. E. Mr. Leandro Despouy, Chairman
Commission on Human Rights

Information for NGOs in consultative status with ECOSOC
(for the kind attention of the Chairman of the Commission on Human Rights).

* As of today, over two thousand non-governmental organizations have obtained consultative status with the Economic and Social Council. Recognizing the importance and the deep interest expressed by NGOs to participate in the work of the Council, and with a view to facilitating the fruitful partnership between the United Nations and the NGO community, the Committee of Non-Governmental Organizations expressed, on several occasions, the view that non-governmental organizations should be reminded of the rules and procedures governing these consultative arrangements.

* According to the Article 71 of the United Nations Charter and the provisions of ECOSOC Resolution 1996/31, organizations in consultative status with the United Nations should be guided by the principle that consultative arrangements are to be made, on the one hand, for the purpose of enabling the Council or one of its bodies to secure expert information or advice from organizations having special competence in the subjects for which consultative arrangements are made, and on the other hand, to enable organizations representing the concerns and important elements of public opinion to express their views.

* As a rule, non-governmental organizations, that express the wish to attend United Nations meetings, are accredited for participation and can designate the persons who will represent them at the meetings. However, NGOs and their designated representatives should, at all times, conform to the principles governing the establishment and nature of their consultative status with the Council. An NGO should keep in mind that the representatives it accredits will speak and act, in the United Nations premises, solely on behalf of the organization. Furthermore, oral/written statements by the NGOs, as well as other documentation prepared by them, should be in conformity with the principles enshrined by the UN Charter, the Universal Declaration of Human Rights and, the Vienna Declaration and Programme of Action. Non-governmental organizations will therefore be held responsible for all persons accredited by them, and for the content of their statements/documents, including in cases of misconduct or violations of rules governing NGO participation at UN meetings.

* Pursuant to Part VIII of ECOSOC resolution 1996/31, the consultative status of non-governmental organizations with the Council can be suspended or withdrawn if the organization, " either directly or through its affiliates or representatives acting on its behalf, clearly abuses its status by engaging in a pattern contrary to the purposes and principles of the Charter of the United Nations including unsubstantiated or politically motivated acts against Member States of the United Nations incompatible with those purposes and principles". The Committee on NGOs, in the past, had to invoke these provisions, which resulted with either the withdrawal or the suspension of the consultative status of certain NGOs.

* The above procedure have been designed to facilitate the working relationship of non-governmental organizations with the United Nations while accommodating an increasing number of organizations applying for consultative status with the Council.

NATIONS UNIES
HAUT COMMISSARIAT AUX DROITS DE L'HOMME

UNITED NATIONS
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CH-1211 Genève 10

REFERENCE ET.mbm

20 March 2002

Dear Mr Bilman,

I would like to thank you for your letter of 1 March 2002 addressed to Ambassador Leandro Despouy, outgoing Chairperson of the 57th session of the Commission on Human Rights

I am pleased to inform you that your letter has already been brought to the attention of concerned NGOs and will be circulated with its annex and reply as official document at the 58th session of the Commission under agenda item 3.

I am particularly appreciative of the cooperation between the Committee and the Commission on Human Rights to which I attach the utmost importance.

With kind regards.

Yours sincerely,

Krzysztof Jakubowski
Chairperson,
58th session of the Commission on Human Rights

- - - - -

Mr. Levent Bilman
Chairman
Committee on Non-Governmental Organizations

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## CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF TORTURE AND DETENTION

### Note verbale dated 21 March 2002 from the Permanent Mission of Italy to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of Italy to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to request circulation of the communication dated 19 February 2002* addressed to Mr. Theo van Boven, the Special Rapporteur on the question of torture, as an official document of the Commission under agenda item 11, in response to the questions about the events in Genoa that were raised by the Special Rapporteur.

* Reproduced in the annex as received, in the language of submission and English only.

**Annex**

*The Permanent Representative of Italy to the*
*International Organizations*
*10, Chemin de l'Imperatrice*
*Geneva* Geneva,

Further to my communication dated 31.10.2001 and in reply to your predecessor's request for clarification, contained in his letter of 30th September last, in relation to the Genoa events (G8 Summit), I have the pleasure to inform you that the judicial organ entrusted with the relevant enquiry is the Public Prosecutor's Office of the Genoa Tribunal, where there are currently nine pending enquiries which should be concluded (though with a possibility of extension) as soon as the persons under investigation have been recorded in the ad hoc register.

Among the issues inquired into, there are the two cases of alleged abuses and violence by the police forces. In consideration of the complexity of the investigations, seven magistrates have been entrusted with accurate controls and verifications, inter alia by means of ad hoc mechanisms, such as the Committees of enquiry set up in Saragoza (Spain) and in other cities in Germany, for the purpose of gathering testimony produced by the people having reported personal injuries back to the police at the time of the events mentioned above. The documents collected by the magistrature also include quite a large number of medical reports drafted by public hospitals.

Mr. Theo van Boven
Special Rapporteur on Torture
Office of the United Nations
High Commissioner for Human Rights
Palais Wilson
GENEVA

The current inquiries not having borne any indisputable results as yet, the only decisions that the judges concerned have made so far are in respect of the warrants of arrest - although none against the young people on remand at the Diaz School - or of the orders of confirmation/removal of precautionary measures issued by the magistrate in charge of the preliminary investigations, upon request by the Public Prosecutor.

Needless to say, Mr. Special Rapporteur, that none of the deadlines that have been fixed in compliance with the Italian legislation have yet expired.

Should the magistrature confirm that there have been cases of illicit behaviour by members of the police forces, they will be sanctioned by the Government without any hesitation and with the necessary rigour. In fact, disciplinary action has already been taken against officials from the Ministry of the Interior.

I shall not fail to keep you posted on the final outcome of the ongoing enquiries and I avail myself of this opportunity to renew to you, dear Mr. Special Rapporteur, the assurance of my highest consideration.

Andrea Negrotto Cambiaso

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## CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF DISAPPEARANCES AND SUMMARY EXECUTIONS

### Note verbale dated 4 March 2002 from the Permanent Mission of France to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of France to the United Nations Office at Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit a comparative table* of loopholes in international law on the subject of forced disappearances prepared by the International Commission of Jurists.

The Mission would be grateful if the Office of the High Commissioner could kindly circulate this table as an official document of the Commission on Human Rights at its fifty-eighth session and make it available to the various committees and working groups in the United Nations human rights system.

* Reproduced in the annex as received, in the language of submission only.

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# Annex

I Tableau comparatif: Lacunes du droit international en matière de disparitions forcée -Commission Internationale de Juristes - Octobre 2001

## Tableau comparatif: Lacunes du droit international en matière de disparitions forcées

Terminologie employée:

Normes spécifiques: normes qui ont trait spécifiquement et explicitement à la disparition forcée.

Normes de référence: normes qui , bien qu'elles ne s'adressent pas spécifiquement et/ou explicitement aux disparitions forcées, font référence directe pour chacun des thèmes traités en relation aux différents aspects de la disparition forcée, ou sont d'un intérêt particulier pour ce sujet.

Autres normes: normes qui n'ont pas trait à la disparitions forcée et qui s'adressent à d'autres violations aux droits de l'homme ou situations, mais qui sont d'intérêt dans la mesure qu'elles abordent un thème spécifique en relation avec la disparition forcée et/ou elles ont trait à des principes ou des éléments juridiques également applicables aux disparitions forcées.

Acronymes utilisés:

| | |
|---|---|
| CICRCR | Conférence Internationale de la Croix-Rouge et du Croissant Rouge |
| CPI | Cour Pénale Internationale |
| GTDFI | Groupe de travail sur les disparitions forcées ou involontaires, des Nations Unies |
| ECHR | Cour européenne des droits de l'homme |
| IACHR | Commission interaméricaine des droits de l'homme |
| IACTHR | Cour interaméricaine des droits de l'homme |
| OAS | Organisation des Etats Américains |
| OAS.GA | Assemblée générale de l'Organisation des Etats Américains |
| OAS.Doc | Document de l'Organisation des Etats Américains |
| PCD | Projet de Convention sur la protection de toutes les personnes contre les disparitions forcées |
| SRCPI | Statut de Rome de la Cour Pénale Internationale |
| UN.CAT | Comité contre la torture, des Nations Unies |
| UN.CHR | Commission des droits de l'homme, des Nations Unies |
| UN.GA | Assemblée générale des Nations Unies |
| UN.HRC | Comité des droits de l'homme, des Nations Unies |
| UN.ILC | Commission du droit international, des Nations Unies |
| UN.Doc | Document des Nations Unies |

Instruments internationaux utilisés:

La liste des instruments internationaux, tant conventionnels comme extra-conventionnels, tant universels comme régionaux, est annexée à la fin du tableau. Dans l'élaboration du tableau, d'autres instruments internationaux ont été analysés, mais ils n'ont pas été répertoriés car ils ne présentaient aucun intérêt particulier.

Les instruments internationaux conventionnels sont répertoriés dans la colonne "Traités". Les instruments internationaux extra-conventionnels sont répertoriés dans la colonne "Normes déclaratives". Egalement, dans cette catégorie ont été inclus les résolutions de l'Assemblé générale des Nations Unies, de la Commission des droits de l'homme des Nations Unies et d'autres organes intergouvernementaux.

| | Thème | Arts. PCD | Traités | Normes déclaratives | Principales jurisprudences, observations et doctrines des organes de traités et des mécanismes internationaux de droits de l'homme | Lacunes et observations |
|---|---|---|---|---|---|---|
| Crime de disparition forcée | Définition du délit de disparition forcée | 1 | Normes spécifiques:<br>• La Convention interaméricaine sur la disparition forcée des personnes, établie à son Article II une définition du crime de disparition forcée: "[…]on entend par disparition forcée des personnes la privation de liberté d'une ou de plusieurs personnes sous quelque forme que se soit, causées par des agents de l'Etat ou par des personnes ou des groupes de personnes qui agissent avec l'autorisation, l'appui ou l'acquiescement de l'Etat, suivie du déni de la reconnaissance de cette privation de liberté ou d'information sur le lieu où elle se trouve cette personne, ce qui en conséquence, entrave l'exercice des recours juridiques et des garanties pertinentes d'une procédure régulière"<br>• Le Statut de Rome de la Cour Pénale Internationale incrimine la disparition en tant que crime contre l'humanité, à son article 7. "[…]on entend par crime contre l'humanité l'un quelconque des actes ci-après lorsqu'il est commis dans le cadre d'une attaque généralisée ou systématique lancée contre toute population civile et en connaissance de cette attaque […] i) la disparition forcée de personnes". A ces effet, l'article 7, 2 (i) du SRCPI, établi la suivante définition: "Par 'disparitions forcées de personnes', on entend les cas où des personnes sont arrêtées, détenues ou enlevées par un État ou une organisation politique ou avec l'autorisation, l'appui ou l'assentiment de cet État ou de cette organisation, qui refuse ensuite d'admettre que ces personnes sont privées de liberté ou de révéler le sort qui leur est réservé ou l'endroit où elles se trouvent, dans l'intention de les soustraire à la protection de la loi pendant une période prolongée. " | Normes spécifiques:<br>• Déclaration sur la protection de toutes les personnes contre les disparitions forcées (Préambule, 3ème paragraphe)<br>• Le premier précédent au niveau des Nations Unies, est la Résolution N° 33/173 de l'Assemblée générale, du 20 décembre 1978. Mais il s'agit d'une description de la disparition forcée, comme violation des droits de l'homme, et plus que d'une définition juridique du crime. | • GTDFI a établi, à plusieurs reprises, une définition opérationnelle (Voir notamment le UN.Doc E/CN.4/1988/19, par. 17). Dans son rapport de 1990, et dans le cadre du projet de Déclaration sur la protection de toutes les personnes contre les disparitions forcées, le GTDFI a proposé des éléments pour une définition de la disparition et a souligner l'importance d'un instrument international qui incrimine la disparition forcée (voir UN.Doc E/CN.4/1990/13, par. 31). Dans son Commentaire général à l'article 4 de la Déclaration sur la protection de toutes les personnes contres les disparitions forcées, le GTDFI a rappelé les éléments constitutif du crime de disparition forcée (UN.Doc E/CN.4/1996/38, par. 55). Dans son Rapport 2000, le GTDFI a rappelé que la disparition forcée est un "délit international" (UN.Doc E/CN.4/2000/64, par. 137).<br>• IACHR, lors des travaux sur le projet de Convention interaméricaine sur la disparition forcée des personnes, a établi des critères pour arriver a une définition du crime de disparition forcée (OAS.Doc CDG/3360-E)<br>• UN.HRC a défini la disparition forcée comme une grave violation des droits de l'homme. Voir, entre autres: Décision du 29 mars 1982, Cas *Bleier Lewhoff et Valiño de Bleier c Uruguay*, Communication N° 30/1878; et Observations et recommandations - Burundi. UN.Doc CCPR/C/79/Add.41, par.9.<br>• IACTHR, a considéré que la disparition forcée est une grave et complexe violation des droits de l'homme et un crime international et que sa pratique est une rupture radicale de la Convention Américaine relative aux Droits de l'Homme. Voir arrêts: arrêts du 29 juillet 1988 *Veldsquez Rodriguez Case*; du 20 janvier 1989, *Godinez Cruz Case*; et du 14 mars 2001 *Barrios Altos Case (Chumbipuma Aguirre et al c. Péron)*. | Il n'existe aucune définition juridiquement contraignante au plan universel du crime de disparition forcée, à part celle du Statut de Rome. Mais Statut de Rome n'incrimine que la disparition forcée en tant que crime contre l'humanité, c'est à dire dans le cadre "d'une attaque généralisée ou systématique lancée contre toute population civile". Ainsi, le crime de disparition forcée en tant que tel, c'est à dire quand il est commis hors de ce cadre, n'est pas couvert par le SRCPI (art. 7)<br><br>La Déclaration sur la protection de toutes les personnes contre les disparitions forcées incorpore dans son préambule une définition opérationnelle de la disparition forcée mais qui ne saurait être considérée comme une définition pénale de l'infraction et en tout cas il s'agit d'un instrument qui n'est pas juridiquement contraignant.<br><br>La Convention interaméricaine sur la disparition forcée des personnes, à son article XVIII, créé la possibilité que tout Etat, non membre de l'Organisation des Etats Américains, adhère à la Convention. Néanmoins, il faut signaler que cette Convention n'aborde pas tout les aspects de la disparition forcée (voir ci-dessous). Egalement, il est peu probable que des Etats non américains y adhèrent et acceptent d'être soumis au contrôle d'un organe intergouvernemental (la IACHR), vis à vis duquel ils ne participent à l'élection des membres. La possibilité d'universaliser la portée de cet instrument régional paraît plus de l'ordre théorique que de la réalité pratique. |

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| Crime de disparition forcée | Qualification comme crime contre l'humanité quand les actes de disparition forcée sont commis dans le cadre d'une pratique massive, à grande échelle ou systématique (selon les termes employés par divers instruments) ou quand ils sont commis dans le cadre "d'une attaque généralisée ou systématique lancée contre toute population civile" (selon les termes employés par le SRCPI). | 3 | **Normes spécifiques:**<br>• Statut de Rome de la Cour Pénale Internationale (art. 7,1): "Aux fins du présent Statut, on entend par crime contre l'humanité l'un quelconque des actes ci-après lorsqu'il est commis dans le cadre d'une attaque généralisée ou systématique lancée contre toute population civile et en connaissance de cette attaque: [...] la disparition forcée".<br>• Convention Interaméricaine sur la disparition forcée des personnes (Préambule, 6ème paragraphe): "Réaffirmant que la pratique systématique de la disparition forcée des personnes constitue un crime de lèse humanité" | **Normes spécifiques:**<br>• Déclaration sur la protection de toutes les personnes contre les disparitions forcées (Préambule, 4ème paragraphe): "leur pratique [des disparitions forcées] systématique est de l'ordre du crime contre l'humanité". La rédaction ne retient pas le caractère massif ou à grande échelle.<br>• Résolutions de l'Assemblée générale de l'Organisation des Etats Américains: AG/Res.666 (XIII-0/83) de 1983, AG/Res.742 (XIV-0/84) de 1984, AG/Res.950 (XVIII-0/88) de 1988, AG/Res.1022 (XIX-0/89) de 1989, et AG/Res.1044 (XX-0/90) de 1990. Ces résolution qualifient de crime contre l'humanité la pratique des disparitions forcées. Il faut souligner que ces Résolutions qualifiaient la pratique de la disparition forcée comme étant *per se* un crime contre l'humanité, sans retenir les éléments massif ou systématique de cette pratique.<br>• Résolution N° 828 de 1984 de l'Assemblée parlementaire du Conseil de l'Europe | • IACTHR, arrêts du 29 juillet 1988 *Velásquez Rodríguez Case*, par. 153; et du 20 janvier 1989, *Godínez Cruz Case*, par. 161: "la doctrine et la pratique internationale ont qualifier à plusieurs reprises les disparitions de crime contre l'humanité".<br>• UN.ILC dans ces travaux sur le Projet de Code des crimes contre la paix et la sécurité de l'humanité, avait décidé d'incorporer dans les listes des crimes contre l'humanité, la pratique systématique ou à grande échelle de la disparition forcée. Voir notamment Rapport 1991, UN.Doc Supplément N° 10, A/46/10, et le Rapport 1996, UN.Doc Supplément N° 10, A/51/10. | Le SRCPI comblerait partiellement la lacune existante, en matière de droit conventionnel. Néanmoins, la portée du SRCPI est relative car:<br>• L'article 7,2 (i) du SRCPI, établi une définition de la disparition forcée qui, à la différence des définitions existantes, retient un élément temporaire indéfini: "une période prolongée". Cette définition pourrait mettre hors du cadre de compétence de la CPI, la pratique de la disparition forcée "temporaire".<br>• La définition établie à l'article 7 du SRCPI est aux effets de l'exercice de la compétence de la CPI. |
| Crime de disparition forcée | Autres délits: instigation, aide, incitation, conspiration, collusion et tentative de disparition forcée. | 2 (1) | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes n'incrimine pas tout ces actes. L'article Premier (d) consacre l'obligation de "sanctionner [...] ceux qui ont participé au délit de disparition forcée des personnes, ou tenté de le commettre à titre d'auteurs, de complices et de receleurs".<br>• Statut de Rome de la Cour Pénale Internationale, article 25. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées n'incrimine pas ces actes, de manière explicite. | | En ce qui concernent la disparition forcée non qualifiée de crime contre l'humanité, il n'existe aucune incrimination de ces actes qui soit juridiquement contraignante au plan universel. Néanmoins, certains de ces actes (comme la tentative ou la complicité) pourraient être réprimer par le biais de l'application des principes généraux de droit pénal.<br>Il fout souligner aussi, que en ce qui concerne le SRCPI, l'article 25 est aux effets de l'exercice de la compétence de la CPI. |
| Crime et loi nationale | Incrimination national: obligation de qualifier dans la législation pénale nationale la disparition forcée comme crime et en tant que délit autonome et de caractère permanent | 5 | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, articles III et IV (1) | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, articles 4 (1) et 17 (1) | • GTDFI : commentaire général de l'article 4 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN.Doc E/CN.4/1996/38, pars 54 à 58) | Il n'existe aucune disposition juridiquement contraignante au plan universel établi cette obligation |

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| Crime et loi nationale | Incrimination national: obligation de qualifier dans la législation pénale nationale la disparition forcée comme un crime contre l'humanité (soit qu'il d'une pratique massive ou systématique, ou soit qu'il s'agit d'actes commis dans le cadre "d'une attaque généralisée ou systématique lancée contre toute population civile") | 5 | Normes spécifiques:<br>• La Convention Interaméricaine sur la disparition forcée des personnes n'établi pas explicitement cette obligation.<br>• Statut de Rome de la Cour Pénale Internationale personnes n'établi pas explicitement cette obligation. | Normes spécifiques:<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées n'établi pas explicitement cette obligation. | | Il n'existe aucune disposition explicite et juridiquement contraignante au plan universel relative à cette obligation<br>Néanmoins, cette obligation devrait découler du "devoir de chaque état de soumettre à sa juridiction les responsables de crimes internationaux " (Préambule du STCPI, par. 6) et du caractère "complémentaire des juridictions pénales nationales" de la CPI (Préambule du STCPI, par. 10). Cela dit, le vide juridique est bel et bien existant pour ce qui a trait à cette obligation . |
| Responsabilité pénale | Responsabilité pénale du supérieur Et délit de Négligence criminelle - l'omission du devoir légal d'agir pour empêcher une disparition forcée. | 2 (2), 3 (2) et 9 (3) | Normes spécifiques:<br>• Statut de Rome de la Cour Pénale Internationale (art. 28)<br>Autres normes:<br>• Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux (Protocole I), article 86 (2)<br>• Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, à son article 2 (3),: l'ordre d'un supérieur ne peut être invoqué pour justifier la torture.<br>• Statut du Tribunal Pénal International Ex Yougoslavie (article 7,3). Le Statut n'incorpore pas la disparition forcée dans la liste des actes constitutifs de crime contre l'humanité (bien qu'il y apparait "tout autre acte inhumain")<br>• Statut du Tribunal Pénal International Rwanda (article 6,3). Le Statut n'incorpore pas la disparition forcée dans la liste des actes constitutifs de crime contre l'humanité (bien qu'il y apparait "tout autre acte inhumain") | Normes spécifiques:<br>• Aucune<br>Autres normes:<br>• Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions (Principe 19)<br>• Code de conduite pour les responsables de l'application des lois (articles 5 et 8)<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principe 32 (b) | En matière de crimes contre l'humanité, ce principe a été amplement reconnu (sans qu'il y soit fait mention à la disparition forcées) par:<br>• Tribunal de Nuremberg, arrêt du 1 octobre 1946 (Cas Frick - euthanasie); Tribunal de Tokyo, arrêt du 12 novembre 1948 (cas responsabilité des officiers supérieurs et prisonniers de guerre); et arrêts des tribunaux alliés (*Re Yamashita* , 4 février 1946; *Homma v. United States* (1946); *Von Leeb - "German High Command Trial"* 28 octobre 1948; *Pohl et al*, 3 novembre 1947; et *List- "Hostage Trial"*, 19 février 1948).<br>• Tribunal Pénal International pour l'ex-Yougoslavie: arrêts du 16 novembre 1998, Cas N° IT-96-21-T, *Prosecutor v. Z Delalic and others*, par. 734; du 3 mars 2000, Cas *Prosecutor v. Blaskic - "Lasva Valley"*, para 289 et suivants; du 20 juillet 2000, Cas N° IT-96-21, *Prosecutor v. Delalic - "Celibici Camp"*, du 26 février 2001, Cas N° IT-95-14/2, *Prosecutor V. Dario Kordic & Mario Cerkez - "Lasva Valley"*, para 366 à 371 et 401.<br>• UN.ILC, UN.Docs Supplément N° 10 (A/46/10), page. 262, et Supplément N° 10 (A/51/10), page. 22 à 30. | En ce qui concernent la disparition forcée non qualifiée de crime contre l'humanité, il n'existe aucune disposition juridiquement contraignante au plan universel pour les disparitions forcées.<br><br>En ce qui concerne les disparitions qualifiées comme crime contre l'humanité, l'article 28 du Statut de Rome résout le problème. Néanmoins, Les clauses de l'article 28 visent l'exercice de la juridiction par la CPI, en matière de responsabilité des chefs militaires et autres supérieurs hiérarchiques. Dans ces conditions, il peut y avoir un vide normatif, du point de vue de l'exercice de la juridiction universelle par un tribunal national d'un tiers pays. |

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| Responsabilité pénale | Responsabilité pénale:<br>du subordonné - non principe d'obéissance due et devoir de désobéissance | 9 (1) | **Normes spécifiques**<br>• La Convention interaméricaine sur la disparition forcée des personnes, article VIII<br>• Statut de Rome de la Cour Pénale Internationale (art. 33)<br>**Autres normes:**<br>• Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, article 2 (3)<br>• Statut du Tribunal Pénal International Ex Yougoslavie (article 7,4). Le Statut n'incorpore pas la disparition forcée dans la liste des actes constitutifs de crime contre l'humanité (bien qu'il y apparaît "tout autre acte inhumain")<br>• Statut du Tribunal Pénal International Rwanda (article 6,4). Le Statut n'incorpore pas la disparition forcée dans la liste des actes constitutifs de crime contre l'humanité (bien qu'il y apparaît "tout autre acte inhumain") | **Normes spécifiques**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées , article 6 (1).<br>**Autres normes:**<br>• Résolution 95 (I) de 1946 de UN.GA<br>• Principes du droit international consacrés par le Statut du Tribunal de Nuremberg et dans le jugement de ce Tribunal, de la UN.ILC, Principe IV<br>• Code de conduite pour les responsables de l'application des lois, article 5<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 26 et 32 (a)<br>**Autres normes:**<br>• Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions, Principe 19 | | En ce qui concernent la disparition forcée non qualifiée de crime contre l'humanité, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>En ce qui concerne les disparitions qualifiées comme crime contre l'humanité, l'article 33 du Statut de Rome aborde le problème. Néanmoins, Les clauses de l'article 33 visent l'exercice de la juridiction par la CPI, en matière d'ordre hiérarchique et ordre de la loi. Dans ces conditions, et étant donné que de nombreux pays retiennent "l'obéissance due" comme un principe intangible dans leurs législations nationales (notamment les législation pénales militaires), il peut y avoir un vide normatif, du point de vue de l'exercice de la juridiction universelle par un tribunal national d'un tiers pays. |
| Répression du crime | Répression par les Tribunaux Nationaux:<br>Obligation d'exercer la compétence territoriale; compétence active (auteur national); et la compétence passive (victime nationale). | 6 | **Normes spécifiques**<br>• La Convention interaméricaine sur la disparition forcée des personnes, Article IV | **Normes spécifiques**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 14<br>• Conférence Mondiale sur les Droits de l'Homme, Section II, par. 60, UN.Doc DPI/1394-48164-October 1993-/M, par. 62, page 66, les Etats doivent prendre les mesures pour sanctionner la disparition forcée et ils ont le devoir de poursuivre les auteurs de ces actes.<br>**Normes de référence:**<br>• projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, Principe 5 | • UN.HRC: les Etats ont le devoir d'enquêter a fond, et juger et de punir les auteurs de disparitions forcée, a fortiori, si ceux-ci sont identifiés (Décision du 3 novembre 1995, Communication N° 563/1993, CCPR/C/55/D/563/1993, par. 8,6; et Décision du 29 juillet 1997, Communication N° 612/1995, CCPR/C/60/D/612/1995, par. 8,8). | Il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |

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| Répression du crime | Répression par les Tribunaux Nationaux: Obligation d'exercer la compétence universelle et le principe *aut dedere aut judicare* | 6 | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, Article IV, "lorsque le délinquant présumé se trouve sur son territoire et qu'il ne prend pas les mesures en vue de son extradition". | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, 14<br><br>**Normes de référence:**<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 24 et 25<br>• projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, Principe 4 | • GTDPI : commentaire général de l'article 4 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN Doc E/CN.4/1996/38, para 54) | Il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |
| Coopération internationale | Extradition: Obligation d'extrader et *principe aut dedere aut judicare* | 7(12) et 13 | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, articles V et VI<br>• Statut de Rome de la Cour Pénale Internationale prévoit des dispositions et des procédures qui règlent les relations entre les Etats et la CPI en matière de remise, transfert et extradition (notamment les articles 12, 17, 19, 89, 90, 91, 93, 102, 107 et 108).<br><br>**Autres normes:**<br>• La Convention européenne d'extradition établi l'obligation d'extrader sur la base du principe de la double incrimination et pour des délits punis avec au moins 1 année de privation de liberté. La Convention ne fait aucune référence explicite au crime de disparition forcée<br>• La Convention interaméricaine relative à l'extradition établi l'obligation d'extrader sur la base du principe de la double incrimination et pour des délits punis avec au moins 2 année de privation de liberté. La Convention ne fait aucune référence explicite au crime de disparition forcée | **Normes spécifiques**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées fait une vague référence à se sujet (article 14)<br><br>**Normes de référence:**<br>• Principes de la coopération internationale en ce qui concerne le dépistage, l'arrestation, l'extradition et le châtiment des individus coupables de crimes de guerre et de crimes contre l'humanité<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 26 et 30 | | Il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>En ce qui concerne la disparition forcée comme crime contre l'humanité, le SRCPI prévoit des dispositions. Néanmoins, le SRCPI ne résout pas les aspects d'extradition entre Etats, quand la CPI n'est pas impliqué dans la procédure.<br><br>La Convention européenne d'extradition et la Convention interaméricaine relative à l'extradition ne donne pas de réponse suffisamment satisfaisante au problème de l'extradition en cas de crime de disparition forcée. Pour l'extradition sur la base d'un des deux traités, entre autres conditions et en application du principe de la double incrimination, la législation nationale des Etats concernés doit prévoir le crime de disparition forcée. Pour le moment il n'y a qu'un petit nombre d'Etats qui ont incorporer dans leur législation le crime de disparition forcée. |

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| Coopération internationale | Extradition:<br>Caractère non politique du crime de disparition forcée aux fins de l'extradition | 12<br>(11) | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, article V (1)<br><br>**Autres normes:**<br>• Protocole additionnel à la Convention européenne d'extradition, (STE N°86), article 1 (a), prescrit que ne sont pas considérés comme infractions politiques "les crimes contre l'humanité prévus par la Convention pour la prévention et la répression du crime de génocide" des Nations Unies, ainsi que les infractions graves aux Conventions de Genève et aux lois et coutumes de la guerre.<br>• La Convention interaméricaine relative à l'extradition ne contient aucune disposition spécifique en ce qui concerne la disparition forcée ou une autre grave violation aux droits de l'homme. Le principe retenu est qu'il n'y a pas d'extradition pour les délits politiques ou assimilés. Néanmoins, l'article 5, reconnait la possibilité d'extrader en vertu d'autre traités. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées fait un référence générale a la coopération entre états et avec l'ONU (article 2,2) en vue à prévenir et éliminer les disparitions forcées. Mais il n'y a aucune clause spécifique dans la matière. | | Il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |
| Coopération internationale | Coopération internationale et d'assistance réciproque en matière d'investigation et de procédures pénales pour la répression du délit de disparition forcée par les tribunaux nationaux | 8 (1) | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, article I, établi une clause générale de coopération entre les états pour prévenir, sanctionner et éradiquer la disparition forcée.<br>• Le SRCPI prévoit plusieurs dispositions en matière coopération des Etats avec la CPI pour les crimes contre l'humanité de compétence de la CPI.<br><br>**Autres normes:**<br>• Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, à son article 9, établi l'obligation d'entraide pour la torture. Néanmoins celle-ci est limitée à l'entraide judiciaire et dans le cadre de procédure pénale. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées fait un référence générale a la coopération entre états et avec l'ONU (article 2,2) en vue à prévenir et éliminer les disparitions forcées. Mais il n'y a aucune clause spécifique dans la matière.<br><br>**Normes de référence**<br>• Principes de la coopération internationale en ce qui concerne le dépistage, l'arrestation, l'extradition et le châtiment des individus coupables de crimes de guerre et de crimes contre l'humanité<br>• projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, Principe 5. | | En ce qui concernent la disparition forcée non qualifiée de crime contre l'humanité, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>Au plan régionale, l'article I de La Convention interaméricaine sur la disparition forcée des personnes, est une clause vague.<br><br>En ce qui concerne la disparition forcée comme crime contre l'humanité, le SRCPI prévoit des dispositions. Néanmoins, apparemment, le SRCPI ne réaout pas les aspects de la coopération entre les Etats, quand la CPI n'est pas impliqué dans le cas ou la procédure. |

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| Coopération internationale | Coopération internationale et assistance réciproque à des fins humanitaires | 8 (2) | **Normes spécifiques:**<br>• aucune<br><br>**Normes de référence:**<br>• La IV Convention de Genève établi un mécanisme et des procédures à travers l'Agence centrale de renseignements et les bureaux de renseignements des Parties au conflit. (arts. 136 à 141).<br>• Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux (Protocole I), article 33. | **Normes spécifiques:**<br>• UNGA, Résolution 33/173 "personnes disparues", du 20 décembre 1978, demande aux Etats de coopérer entre eux et avec les Nations Unies dans la recherche et localisation des disparus (Paragraphe résolutif 1,d) | | Il n'existe aucune disposition juridiquement contraignante au plan universel relative à la coopération internationale et d'assistance réciproque à des fins humanitaires, sauf dans les situation de conflits armés internationaux. Ni la Convention interaméricaine sur la disparition forcée des personnes ni le SRCPI aborde cet aspect de la coopération internationale. |
| Impunité | Souverainetés<br>Immunité.<br>Interdiction d'accorder des amnisties ou autres mesures similaires | 17 | **Normes spécifiques:**<br>• Le Statut de Rome de la Cour Pénale Internationale aborde la question, sans faire mention explicite à l'amnistie, à ses article 17 et 20 (3) et en fonction de l'exercice de la juridiction de la future Cour. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 18.<br><br>**Normes de références:**<br>• Conférence Mondiale sur les Droits de l'Homme, Section II, par. 60, UN Doc DPI/1394-48164-October 1993-/M, p. 65<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 26 et 28 | • CIDH : commentaire général de l'article 4 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN Doc E/CN.4/1996/38, par. 58)<br>• UN HRC: les amnisties aux responsables de graves violations aux droits de l'homme (notamment de disparitions forcées) sont incompatibles avec les obligations du Pacte. Voir: Observation générale No. 20 (relative à l'article 7) et "Observations et recommandations" Argentine, CCPR/C/79/Add.46; A/50/40, par. 144 et CCPR/CO/70/ARG, par. 9; Chili, CCPR/C/79/Add.104, par. 7; Congo CCPR/C/79/Ad.118, par. 12; France, CCPR/C/79/Add.80, par. 13; Liban CCPR/C/79/Add78, par. 12; El Salvador, CCPR/C/79/Add.34, par. 7; Haiti, A/50/40, para. 224 - 241; Pérou CCPR/C/79/Add.67, para. 9 et 10, et CCPR/CO/70/PER, par. 9; Niger, CCPR/C/79/Add.17, par. 7; Uruguay, CCPR/C/79/Add.19 para. 7 et 11 et CCPR/C/79/Add.90; Yémen, A/50/40, para. 242 - 265; et Croatie .<br>• IACtHR arrêt du 14 mars 2001 *Barrios Altos Case (Chumbipuma Aguirre et al c. Pérou)*, par. 41: "Cette Cour considère que sont inadmissibles les dispositions de l'amnistie, les dispositions relatives à la prescription et l'établissement de clause d'exclusion de responsabilité qui prétendre empêcher l'enquête et le châtiment des responsables de graves violations aux droits de l'homme, telles que [...] les disparitions forcées". | Il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>En ce qui concerne la disparition forcée comme crime contre l'humanité, le SRCPI donne des réponses, selon lesquelles la CPI ne serait être tenue de reconnaître une amnistie accordé par un Etat pour procéder à juger les responsables de ce crime. Néanmoins, la portée est limitée, car les clauses des article 17 et 20 visent les conditions de recevabilité et de l'exercice de la juridiction par la CPI. Le SRCPI ne résout pas le problème de l'amnistie vis à vis de l'exercice de la juridiction universelle par des tribunaux nationaux de tiers pays: il existe un vide juridique en cette matière . |

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| Impunité | Sauvegardes asile: Interdiction de donner asile ou refuge aux auteurs effectifs ou présumés de disparition forcée | 14 | **Normes spécifiques:**<br>• aucune<br><br>**Normes de référence:**<br>• Convention relative au statut des réfugiés, article 1 (f). Cette prohibition couvre tant les crimes contre l'humanité comme les graves crimes de droit commun.<br>• the Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa (Article I (5)) | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 15.<br><br>**Normes de référence:**<br>• Déclaration sur l'asile territorial, article 1 (2), ), mais cette prohibition est limitée aux crimes contre l'humanité.<br>• Principes de la coopération internationale en ce qui concerne le dépistage, l'arrestation, l'extradition et le châtiment des individus coupables de crimes de guerre et de crimes contre l'humanité, principe 7, mais cette prohibition est limitée aux crimes contre l'humanité<br>• Conclusion No. 17 (XXXI) "Problems of Extradition Affecting Refugees", adopted by the Executive Committee of the United Nations High Commissioner for Refugees (1980),<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 26, 29 et 30 | • IACHR, Recommandation "Asylum and International Crimes" du 20 octobre 2000: "States have accepted that there are limits to asylum, based on several sources of international law, including that asylum cannot be granted to persons with respect to whom there are serious indicia that they may have committed international crimes, such as crimes against humanity (which include the forced disappearance of persons, torture, and summary executions), war crimes, and crimes against peace." (OEA/Ser./L/V/II.111, doc. 20 rev. 16 April 2001) | Il n'existe aucune disposition spécifique et juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>Néanmoins, l'article 1 (f) de la Convention relative au statut des réfugiés peut offrir certaines réponses, du fait qu'il fait référence au crime contre l'humanité et au grave crime de droit commun. |

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| impunité | Sauvegarder tribunal compétent: Attribution de compétence de juridiction exclusive aux tribunaux de droit commun, à l'exclusion des tribunaux militaires | 10 | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, article IX<br>---<br>**Normes de références:**<br>• Pacte international relatif aux droits civils et politiques, article 14 | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 16.<br>---<br>**Normes de références:**<br>• UN.CHR, Résolution "Forces de défense civile" N° 1994/67: les délits qui impliquent des violations aux droits de l'homme par ces forces doivent être soumis à la juridiction des tribunaux civils" (2,f).<br>• UN.CHR, Résolution 1989/32, recommande aux Etats de tenir compte des principes énumérés dans le Projet de Déclaration sur l'Indépendance de la Justice, ou Déclaration Singhvi, laquelle à son article 5 (f) stipulait que la compétence des tribunaux militaires devait être limitée aux "délit militaires".<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 26 et 34 (UN.Doc E/CN.4/Sub.2/1997/20)<br>• Projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, comme une modalité du droit à la réparation (Non renouvellement des violations), Principe 25, i (ii). | • GTDFI : commentaire général de l'article 4 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN.Doc E/CN.4/1996/38, par. 56). Voir aussi: E/CN.41989/18/Add.1, par. 136; E/CN.41990/13, par. 345; E/CN.41991/20, par 408; E/CN.41992/18, para 367 et E/CN.4/1993/25, par. 46.<br>• Bien que le Pacte international relatif aux droits civils et politiques, à son article 14, parle en termes de "tribunal, compétent, indépendant et impartial", le problème des tribunaux militaires n'est pas abordé de manière explicite ou spécifique. Dans son Observation générale N° 13 sur l'article 14 du Pacte, le UN.HRC ne considérait pas les tribunaux militaires comme étant *per se* incompatibles avec l'article 14 du Pacte. Mais dans les 10 dernières années, le UN.HRC a systématiquement considéré que le procès de militaires et/ou policiers par des tribunaux militaires pour des graves violations aux droits de l'homme (notamment de disparitions forcées) est incompatible avec les obligations du Pacte voir les Observations et recommandations: Colombie, CCPR/C/79/Add.76, CCPR/C/79/Add,2; Egypte, CCPR/C/79/Add.23Bolivia, CCPR/C/CCPR/C/79/Add.74; Liban CCPR/C/79/Add.78; Brésil, CCPR/C/79/Add.66, par. 10; Pérou CCPR/CO/70/PER; Liban, CCPR/C/79/Add.78, par.14; Chili, CCPR/C/79/Add. 104, par. 9; Cameroun, CCPR/C/79/Add.116, par. 21; Ouzbékistan, CCPR/CO/71/UZB; et Syrie, CCPR/CO/71/SYR.<br>• UN.CAT, UN.Doc A/51/44 (Colombie) | En ce qui concernent la disparition forcée, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>En dépit de l'abondante jurisprudence et doctrine des organes et mécanismes internationaux des droits de l'homme, il n'existe aucune disposition juridiquement contraignante au plan universel qui exclu les graves violations aux droits de l'homme (notamment les disparitions forcées) du champs de compétence des tribunaux militaires. |

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| Impunité | Sauvegardes imprescriptibilité: imprescriptibilité de l'action pénale et de la peine du délit de disparition forcée qualifiée comme crime contre l'humanité | 3 et 16 (1) | **Normes spécifiques:**<br>• Statut de Rome de la Cour Pénale International, article 29<br>• Convention interaméricaine sur la disparition forcée des personnes, Article VII. Il s'agit d'une imprescriptibilité relative ou conditionnelle: c'est à dire s'il n'y a pas une norme constitutionnel qui interdit l'imprescriptibilité dans le droit national.<br>**Autres Normes:**<br>• Convention sur l'imprescriptibilité des crimes de guerre et des crimes contre l'humanité<br>• Convention européenne sur l'imprescriptibilité des crimes contre l'humanité et des crimes de guerre | **Normes spécifiques:**<br>**Normes de référence:**<br>• projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, Principe 6 | | Il n'existe aucune disposition explicite et juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>Le Statut de Rome de la Cour Pénale International résout uniquement le problème de l'imprescriptibilité dans les cas de disparitions forcées (crimes contre l'humanité) vis-à-vis desquels la CPI exerce sa juridiction.<br><br>Ni la Convention sur l'imprescriptibilité des crimes de guerre et des crimes contre l'humanité ni la Convention européenne sur l'imprescriptibilité des crimes contre l'humanité et des crimes de guerre car aucun des deux traités inclus la disparition forcée ni renvois à d'autres instruments qui inclus la disparition forcée. |
| Impunité | Sauvegardes prescription: sauvegardes pour que la prescription ne soit pas un facteur d'impunité, dans les cas de disparitions forcées qui ne sont pas des crimes contre l'humanité | 16 (2) | **Normes spécifiques:**<br>• La Convention Interaméricaine sur la disparition forcée des personnes, article VII | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 17<br>**Normes de référence:**<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 26 et 27<br>• projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, Principe 7 | • GTDFI : commentaire général de l'article 17 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN Doc E/CN.4/2001/68, para. 25 à 32)<br>• IACTHR arrêt du 14 mars 2001 *Barrios Altos Case (Chumbipuma Aguirre et al c.. Pérou)*, par. 41: "Cette Cour considère que sont inadmissibles [...] les dispositions relatives à la prescription [...]qui prétendre empêcher l'enquête et le châtiment des responsables de graves violations aux droits de l'homme, telles que [...] les disparitions forcées". | il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |

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| Prévention | Privation de liberté: lieux de détention officiels et sous contrôle | 22 | **Normes spécifiques:**<br>• La Convention Interaméricaine sur la disparition forcée des personnes, article XI<br><br>**Normes de référence:**<br>• La IV Convention de Genève établi l'obligation; de la Puissance occupante de notifier à la Puissance protectrice le lieu de détention ou de residences des prévenus civils (art.71); et l'obligation de la Puissance détentrice d'informer les Puissances ennemies sur la situation géographique des lieux d'internement de civils. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 10 (1)<br><br>**Normes de référence:**<br>• Ensemble de principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement, principes 20 et 29<br>• Règles pénitentiaires européennes, règle 7 | • GTDFI : commentaire général de l'article 10 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN.Doc E/CN.4/1997/34, par.24 et 30). Aussi E/CN 41992/18, par. 204 (d)<br>• UN.HRC, à plusieurs reprise a recommandé que les personnes privé de liberté soient placées dans des lieux de détention officiels et sous contrôle d'une autorité compétente. Voir: Observations générales N° 20 (art. 7 du Pacte), par. 11, et N° 21 (art. 10 du Pacte), par. 6. Observations République Kirghize, CCPR/CO/69/KGZ par. 7; Tunisie, CCPR/C/79/Add.43, par. 15; Soudan, CCPR/C/79/Add.85, par. 15; Observations Maroc, CCPR/C/79/Add.113 par. 16; Algérie CCPR/C/79/add. 95, par. 12. | En dépit de l'abondante jurisprudence et doctrine des organes et mécanismes internationaux des droits de l'homme, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>Ni le Pacte international relatif aux droits civils et politiques ni la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants ne prévoient une disposition spécifique et explicite à ce sujet<br><br>Néanmoins, les Conventions de Genève donnent une réponse dans la cadre de conflits armés internationaux. |
| Prévention | Privation de liberté: registres officiels et centralisés des personnes privées de liberté | 22 | Normes spécifiques:<br>• La Convention Interaméricaine sur la disparition forcée des personnes, article XI<br><br>**Normes de référence:**<br>• IV Convention de Genève, arts. 136 et suivants. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 10 (3)<br><br>**Normes de références:**<br>• Ensemble de règles minima pour le traitement des détenus, règle 7<br>• Ensemble de principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement, principe 12<br>• Règles pénitentiaires européennes, règles 7 et 8 | • GTDFI : commentaire général de l'article 10 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN.Doc E/CN.4/1997/34, par.27 et ). Aussi E/CN 41992/18, par. 371 et /Add 1 par. 204 (d)<br>• UN HRC, Observations générales N° 7, (art. 7 du Pacte) par. 1 et N° 20 (art. 7 du Pacte), par. 11. Observations Tunisie, CCPR/C/79/Add.43, par. 15; Inde, CCPR/C/79/Add. 81, par. 24; Chypre CCPR/C/79/Add.88 par. 5; Pérou CCPR/C/79/Add.67, par. 5<br>• UN.HRC, dans ses Observations à l'Algérie, a recommandé d'établir un registre central des cas de disparitions forcées rapportés (CCPR/C/79/add. 95, par. 10).<br>• UN.CAT: Observations Bolivie CAT/C/XXVI/Concl.3/rev.1, par. 21; Observation Tunisie, A/54/44, (par 88-105); Egypte A/54/44 (par. 197.216); Cameroun AT/C/XXV/Concl.5, par. 7. | En dépit de l'abondante jurisprudence et doctrine des organes et mécanismes internationaux des droits de l'homme, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée.<br><br>Ni le Pacte international relatif aux droits civils et politiques ni la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants ne prévoient des dispositions spécifiques et explicites à ce sujet<br><br>Néanmoins, les Conventions de Genève donnent une réponse dans la cadre de conflits armés internationaux. |

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| Prévention | Privation de liberté: Dispositions garantissant la légalité de la privation de liberté et son contrôle par un organe judiciaire ou une autre autorité compétente | 21 | **Normes spécifiques:**<br>• La Convention Interaméricaine sur la disparition forcée des personnes, article XI<br>**Normes de référence:**<br>• Pacte international relatif aux droits civils et politiques, article 9 et 14.<br>• IV Convention de Genève: étrangers (art. 40 à 43), prévenus civils (arts. 69 et suivants); civils internées (arts. 79 et suivants)<br>**Autres Normes:**<br>• la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, à son article 1, prévoit une clause général mais vague. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, articles 11 et 12<br>**Normes de référence:**<br>• Ensemble de principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement, principes 2 et 4 | • GTDFI : commentaire général de l'article 10 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN Doc E/CN 4/1997/34, pars 28 à 30)<br>• UN HRC, dans ces Observations générales N° 7, 8, 9, 13, 20, 21et 29, analyse la portée générale des dispositions garantissant la légalité de la privation de liberté et son contrôle par un organe judiciaire ou une autre autorité compétente . | Le Pacte donne des réponses au problème, ainsi que les Conventions de Genève, pour ce qui concerne les conflits armés internationaux. |
| Prévention | clause de *non refoulement* Interdiction d'expulser, extrader ou refouler une personne vers un Etat s'il y a des risques qu'elle soit victime de disparition forcée | 15 | **Normes spécifiques:**<br>• Aucune<br>**Normes de référence:**<br>• Convention relative au statut des réfugiés, article 33;<br>• Convention sur l'Asile Territorial de l'OEA. L'extradition ne peut procéder pour des délits politiques ou quand l'extradition obéit à des raisons politiques (article IV).<br>• Convention Américaine des Droits et des Devoirs de l'Homme. Art. 22 (8), clause générale de non refoulement.<br>**Autres Normes:**<br>• Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, article 3.<br>• La Convention européenne d'extradition (art. 3) et la Convention Interaméricaine relative à l'extradition (art.4) ont une Clause générale de non extradition pour des délits politiques, délits connexes ou pour des motifs de persécution politiques ou autres.<br>• Convention interaméricaine pour prévenir et punir la torture, art. 13 (4). | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 8.<br>**Normes de référence:**<br>• Déclaration sur l'asile territorial, article 3 (1)<br>**Autres Normes:**<br>• Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions, principe 5 | • UN.HRC: Bien que le Pacte international relatif aux droits civils et politiques ne prévoit aucune disposition spécifique et explicite à ce sujet, le UN HRC, dans son Observation générale N° 20 (par. 9), et en ce qui concerne la torture et les mauvais traitement, a considéré qu'il s'agit d'une obligation inhérente à article 7 du Pacte. Voir aussi Observations Canada CCPR/C/79/Add. 105, par. 13.<br>• IACHR, en citant la Déclaration de Carthagène, a souligner que la clause de non refoulement est la pierre de touche de la protection internationale des réfugiés et un principe de *jus cogens* (Rapport annuel 1984-1985, OEA/Ser.L/V/II.66, Doc. 10 rev. 1, 1° octobre 1985 | Bien que des réponses au problème puissent être données au plan de normes conventionnelles, notamment la Convention relative au statut des réfugiés, aucunes d'elles ne fait mention explicite à la disparition forcée. il n'existe aucune disposition et spécifique à disparition forcée, juridiquement contraignante au plan universel . |

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| Prévention | Recours:<br>Obligation de garantir, un recours non dérogeable judiciaire rapide, simple et efficace pour déterminer la destination du "disparu" | 20 | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, article X<br>**Normes de référence:**<br>• Pacte international relatif aux droits civils et politiques, article 9 (4). Cet article est lié à l'article 2 (3) du Pacte Néanmoins c'est deux articles ne sont pas non-dérogeable selon l'article 4 du Pacte.<br>• Convention Américaine relative aux Droits de l'Homme, articles 7 (6) 25 et 27 (2). | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 9<br>**Normes de référence:**<br>• Ensemble de principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement, principe 32<br>• La Résolution 1992/35 "Habeas corpus", de la UN.CHR demande que ce recours soit maintenu même lors de l'état d'exception | • GTDFI: UN.Docs E/CN.41983/14, par. 141; E/CN.41986/18/Add.1, para. 55-58; E/CN.41989/18/Add.1, par. 136; E/CN.41990/13, par. 346; E/CN.41991/20/Add.1, par 167; E/CN.41991/20, par 409; E/CN.41992/18, para 368-370); et E/CN.41993/25, par. 514;<br>• UN.HRC: dans son Observation générale N° 29 sur l'article 4 du Pacte International relatif aux droits civils et politiques, a considéré que le recours de l'article 2 (3) est non-dérogable, car il s'agit d'une obligation inhérente du traité. (UN.Doc CCPR//C/21/Rev.1/Add.11, par. 14),<br>• IACTHR: avis consultatifs OC-8/87 et OC- 9/87. | En dépit de l'abondante jurisprudence et doctrine des organes et des mécanismes internationaux des droits de l'homme, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |
| Prévention | Information aux familles:<br>Obligation d'informer les familles de personnes privées de liberté sur leurs arrestations ou transferts, ainsi qu'à leur avocat ou un tiers avec intérêt légitime | 22 (2) | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, article XI: l'Etat doit mettre à disposition des familles les registres de détenus.<br>**Normes de référence**<br>• IV Convention de Genève, article 137 et 138. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 10 (2)<br>**Normes de référence:**<br>• Ensemble de principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement, principe 16<br>• Ensemble de règles minima pour le traitement des détenus, règle 92<br>• Règles pénitentiaires européennes, règle 92 | • GTDFI : commentaire général de l'article 10 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN.Doc E/CN.4/1997/34, para 26 et 30)<br>• UN.HRC, sans se référé de manière spécifique à la disparition forcée, le UN.HRC a recommandé à plusieurs reprises que les Etats doivent garantir cette information aux familles et au avocats des personnes privées de liberté. Voir: Observations Tunisie, CCPR/C/79/Add.43, par. 15; Algérie CCPR/C/79/add. 95, par. 12; Indo, CCPR/C/79/Add. 81, par. 23<br>• UN.CAT: Observation Tunisie, A/54/44 (par 88-105) | En dépit de l'abondante jurisprudence et doctrine des organes et mécanismes internationaux des droits de l'homme, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. Néanmoins, les Conventions de Genève donnent une réponse dans le cadre de conflits armés internationaux. |

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| Enquête | Enquête:<br>Dispositions garantissant une enquête rapide, exhaustive et impartiale, avec attribution d'amples pouvoirs d'investigation | 11 | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, Article X<br>**Autres Normes**<br>• Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, article 6 (aux fins de la règle *aut dedere aut judicare*) et 12. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 13<br>• UN.CHR: les Etats doivent réaliser des enquêtes rapides et impartiales des cas de disparitions forcées (entre autres les Résolutions 1993/35, par. 13; 1994/39, par. 14 et 1995/38 , par. 12).<br>**Normes de référence:**<br>• Ensemble de principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement, principe 34<br>**Autres Normes:**<br>• Principes directeurs applicables au rôle des magistrats du parquet, articles 10 à 16.<br>• Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et protéger les droits de l'homme et les libertés fondamentales universellement reconnus, Article 9 (5). | • GTDFI: les Etats doivent réaliser des enquêtes impartiales sur les cas de disparitions forcées. Voir entre autres les UN.Doc. E/CN.4/1994/26, par. 86; E/CN.4/1990/13, par. 22; et E/CN.4/1992/18, par. 367.<br>• UN.HRC: Observation générale N°6: les Etats ont le devoir d'établir des services et des procédures effective d'enquête sur les disparitions forcées (UN.Doc. HRI/GEN/1/Rev.1, page 8.). Les enquêtes doivent être menées par des organes indépendants et impartiaux et distincts aux forces militaires ou de polices présumés responsables des violations de droits de l'homme (notament des disparitions forcées): Observations du UN.HRC Venezuela, CCPR/CO/71/VEN, par. 8; République Kirghize, CCPR/C0/69/KGZ, par. 7; Chili, CCPR/C/79/Add.104, par. 10; Bélarus, CCPR/C/79/add.86, par. 9; Ex République Yougoslave de Macédoine, CCPR/C/79/Add.96, par. 10; Cameroun, CCPR/C/79/Add.116, par. 20; Soudan, CCPR/C/79/Add.85, par. 12; Mauricie, CCPR/C/79/Add.60,; - Brésil, CCPR/C/79/Add.66, par. 22; Allemagne, CCPR/C/79/Add.73, par. 11; Bolivie CCPR/C/79/Add.74, par. 28; Kuwait, CCPR/CO/KWT, par. 13; Sri Lanka, CCPR/C/79/Add.56, par. 30; Yémen, A/50/40,; Guyana, CCPR/C/79/Add.121, par. 10; Algérie CCPR/C/79/Add.95, pars. 6, 7. Y 9; et Pérou, CCPR/C/79/Add.67, par. 22 | En dépit de l'abondante jurisprudence et doctrine des organes et mécanismes internationaux des droits de l'homme, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |
| Enquête | Accès aux lieux de détention et autres , inclus les sites militaires | 11 | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes, article XI (1) | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article13 (2). Mais aucune mention est faite à la possibilité d'accéder aux dépendances militaires | | Il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |
| Enquête | Suspension provisoire de la fonction des présumés responsables | 11 (8) | **Normes spécifiques:**<br>• aucune | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article16 (1) | • UN.HRC a recommandé ce type de mesures vis à vis des présumés auteurs de graves violations aux droits de l'homme. Voir: Observations Brésil CCPR/C/79/Add.66 par. 20; Colombie, CCPR/C/79/Add. 76, pars. 32 et 34<br>• UN.CAT: recommandé ce type de mesures vis à vis des présumés auteurs de torture. Voir: Observations Bolivie CAT/C/XXVI/Concl.3/rev.1, par. 22 | Il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |

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| Enquête | Durée de l'enquête<br>Devoir d'enquêter tant que le sort du disparu n'est pas élucidé | 11<br>(7) | **Normes spécifiques:**<br>• aucune | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées 13 (6). | • IACTHR: La IACTHR considère que cette obligation découle du caractère permanent et continu du crime de disparition forcée. Voir Arrêts Cas *Velásquez Rodríguez*, Réparation, 21 juillet 1989, para. 32 y 34; Cas *Godínez Cruz*, Réparation, 21 juillet 1989, para. 30 y 32; Cas *Caballero Delgado y Santana*, 8 décembre 1995, par. 69 Cas *El Amparo*, Réparation, 14 septembre1996, par. 61 . | Il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |
| Victimes | Concept de victime et autres personnes lésées avec le crime de disparition forcée | 24 | **Normes spécifiques:**<br>• aucune clause.<br>**Normes de référence:**<br>• Pacte international relatif aux droits civils et politiques, article 9 (5), protège le "droit à réparation" de toute personne victime "arrestation ou de détention illégale".<br>**Autres Normes:**<br>• Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, article 14. Limité à la personne torturé, selon la définition de torture (article 1er.). Pour les autres personnes lésée, la Convention renvoi a la législation nationale (art. 14, 2). | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées.<br>**Normes de référence:**<br>• Déclaration des principes fondamentaux de justice relatifs aux victimes de la criminalité et aux victimes d'abus de pouvoir. Principes 1,2, 3 et 18.<br>• Le projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, au Principe 8 de sa dernière version a repris la définition de victime proposée par l'article 24 du Projet de Convention. | • GTDFI : commentaire général de l'article 19 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN.Doc E/CN.4/1998/43, para 72). Sur le cercle ample de victimes ou de personnes affectées par la disparition, voir E/CN.4/1984/21, par. 172; E/CN.4/1990/13, par. 339; E/CN.4/1985/15, par. 291<br>• IACHR: Sur le cercle ample de victimes ou de personnes affectées par la disparition, Rapport annuel - 1977, 1978, OEA/Ser.L/V/II.43, doc 21, corr.1, page. 24; Rapport annuel - 1978, OEA/Ser.L/II.47, doc. 13 rev., page. 23; Rapport sur la situation des droits de l'homme en Argentine, 1980, OEA/Ser.L/V/II/49, doc. 19, page. 59; et Rapport annuel, 1980 - 1981, OEA/Ser.G, CP/doc.1201/1981, page. 113; Rapport annuel, 1985-1986, OEA/Ser.L/V/II.68,,Doc. 8 rev 1, 6, page. 205; et, entre autres, décision N° 136/99, de 22 de décembre de 1999, Cas 10.488 - Ignacio Ellacuría y otros, El Salvador párr. 224<br>• CICRCR: Sur le cercle ample de victimes ou de personnes affectées par la disparition, Résolution XXIV "Disparitions forcées ou involontaires" de 1981 | Le droit à la réparation des violation des droits de l'homme est un principe universellement reconnu. La jurisprudence des organes de traités, tant au plan universel comme régional, a développé la nature, portée et destinataires du droit à la réparation. Néanmoins, du point de vue des normes conventionnelles, notamment en ce qui concerne la disparition forcée, il y a un déficit de réglementation de ce droit et, très spécialement, qui en sont titulaires.<br><br>L'article 9 (5) du Pacte international relatif aux droits civils et politiques est insuffisant en matière de disparition forcée. La disparition forcée ne saurait être réduite à une simple "arrestation ou de détention illégale", étant donné son caractère de violation de droits de l'homme pluri-offensive, et le nombre des victimes ne pourrait être réduit au seul "disparu". |

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| Victimes | Droit à la réparation; Modalités de réparation | 24 | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes ne prévoit aucune clause spécifique.<br><br>**Autres normes:**<br>• Pacte international relatif aux droits civils et politiques, article 9 (5). | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées.<br><br>**Normes de référence:**<br>• Déclaration des principes fondamentaux de justice relatifs aux victimes de la criminalité et aux victimes d'abus de pouvoir. Principe 8 à 12. Mais les principes abordo la réparation seulement sous les modalités de restitution et indemnisation.<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 40 à 45<br>• Projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, Principes 21 à 25. | • GTDFI: commentaire général de l'article 19 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées (UN Doc E/CN.4/1998/43, para 78 à 75) | La jurisprudence des organes de traités, tant au plan universel comme régional, et les travaux de la UN.ILC illustrent les différentes modalités de réparation. Néanmoins, du point de vue des normes conventionnelles, notamment en ce qui concerne la disparition forcée, il y a un déficit de réglementation des modalités de la réparation |

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| Victimes | Droits des victimes:<br>Droit à la justice:<br>Droit à un recours judiciaire;<br>Droit à participer aux procédures pénales (partie civile, tiers intervenant etc..)<br>Droit d'ester en justice et de participer aux procédures pénales, de tiers légitime (ONGs, figure de l'accusation populaires etc....) | 24 | **Normes spécifiques:**<br>• aucune<br>**Normes de référence:**<br>• Le Pacte international relatif aux droits civils et politiques, établi le droit à un recours judiciaire pour les victimes de violations de droits protégés par le Pacte. Mais l'approche est générique et générale: il s'agit du droit à un recours judiciaire et non pas a être une partie du procès (partie civile, tiers intervenant etc....). De plus il s'agit d'un recours limité à la victime et aux ayants droit, mais ne s'applique pas aux tiers avec un intérêt légitime (ONG par exemple).<br>**Autres normes:**<br>• Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, article 13. Limité au droit de porter plainte | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées<br>**Normes de référence:**<br>• Déclaration des principes fondamentaux de justice relatifs aux victimes de la criminalité et aux victimes d'abus de pouvoir. Principes 4 à 7.<br>• Principes fondamentaux relatifs à l'indépendance de la magistrature. Le principe 6 établi d'une manière générale le devoir de veiller "à ce que les droits des parties soient respectés".<br>• Principes directeurs applicables au rôle des magistrats du parquet. L'article 13 (d,) établi le devoir pour le parquet de tenir compte des points de vue et des préoccupations des victimes.<br>• Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et protéger les droits de l'homme et les libertés fondamentales universellement reconnus. Article 9, 3 (a et b).<br>• Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité. Le Principe 20 : Les Etats doivent prendre des mesures qui permettent que les victimes, leurs ayants droit et les ONGs puissent intervenir dans les procédures criminelles et se constituer en partie civile.<br>• Projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire, Principes 11 à 14. | | En matière de disparition forcée, il n'existe aucune disposition juridiquement contraignante au plan universel qui règle d'une manière intégrale le droit à un recours judiciaire, permettant explicitement aux victimes et leur famille de participer aux procédures pénales (comme partie civile, tiers intervenant etc..). Egalement, il n'y a aucune disposition conventionnelle qui habilite les ONGs à ester en justice et de participer aux procédures pénales, dans les cas de disparitions forcées (bien que cette habilitation est reconnue dans plusieurs législation nationales). |

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| Victimes | Droit des familles de "disparu":<br>A être informé des résultats des enquêtes sur le sort du disparu et/ou le lieu où il se trouve | II (6) | **Normes spécifiques:**<br><br>**Normes de référence:**<br>• Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux (Protocole I), article 32. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article II (6).<br><br>**Normes de référence:**<br>• Principes directeurs applicables au rôle des magistrats du parquet. L'article 13 (c, et d,) n'établi aucun devoir d'informer les victimes et/ou leur familles.<br>• UN.GA: les familles ont le droit de connaître le sort encouru par les disparus (Résolutions 33/173; 43/159, 44/160; 45/165; 46/125; et 47/132).<br>• UN.CHR: les familles ont le droit de connaître le sort encouru par les disparus (Résolutions 1883/24; 1985/20, 1986/55, 1997/26 et 1988/40, 1999/38).<br>• OAS.GA: les Etats doivent informer les familles du sort encouru par les disparus: résolutions AG/Res. 618 (XII-0/82) par. 7; AG/Res. 666 (XIII-0/83) par. 5; et AG/Res. 742 (XIV-0/84) par. 5.<br>• Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et protéger les droits de l'homme et les libertés fondamentales universellement reconnus (Article 6). | • GTDFI: les familles ont le droit de connaître le sort ou le destin du disparu: "unquestionablby, their right to know can be neither denied nor ignored" (E/CN.4/1435, par. 187. Voir aussi: E/CN.4/1435, par. 187; E/CN.4/1983/14, par. 134 et E/CN.4/1984/21, par. 171)<br>• IACHR: les familles ont le droit de connaître le sort ou le destin du disparu (Rapport de la IACHR 1987-1988, OEA/Ser.L/V/II.74, Doc. 10, rev. 1, page. 359)<br>• IACTHR: les familles ont le droit à être informées sur le sort ou le destin du disparu et les Etats ont l'obligation de les informer: Arrêts Cas *Velásquez Rodríguez*, 29 juillet 1988, par. 181; Cas *Godínez Cruz*, 20 janvier 1989, par. 19; Cas *Aloeboetoe et al*., Réparation, 10 septembre 1993, Cas *Neira Alegría et al*., Réparation, 19 septembre 1996, par. 69; Cas *Caballero Delgado y Santana*, Réparation, 29 janvier 1997, par. 58; et Cas *Castillo Páez*, 3 novembre 1997, par. 90.<br>• UN.HRC, la mère d'une disparue à le droit de savoir le sort encouru par sa fille ( Décision du 21 juillet 1983, Communication N° 107/981, Cas *M. C. Almeida de Quinteros, Uruguay*). Voir aussi Observations Maroc, CCPR/C/79/Add.113 par. 10; Guatemala, CCPR/C/79/Add.63. (lettre E) | A l'exception du Droit international humanitaire et en dépit de l'abondante jurisprudence et doctrine des organes et mécanismes internationaux des droits de l'homme, il n'existe aucune disposition juridiquement contraignante au plan universel en matière de disparition forcée. |

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| Enfants | <u>délit:</u><br>délit d'enlèvement d'enfants de parents "disparus"<br>et l'obligation de l'incriminer dans la loi nationale et de le réprimer | 18 (1) et (4) | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personne traite le problème du seul angle de la coopération international dans la recherche des enfants (article XII)<br>**Normes de référence:**<br>• La Convention relative aux aspects civils de l'enlèvement international d'enfants, déclare illicites le transfert et la rétention d'enfants à un autre pays, en violation au droit de garde (article 3). Mais aucune définition du délit est proposée.<br>• La Convention interaméricaine relative à la restitution internationale de mineure. Cette Convention est très proche à la Convention relative aux aspects civils de l'enlèvement international d'enfants.<br>• Convention relative aux droits de l'enfant,. Article 35: " Les Etats parties prennent toutes les mesures appropriées sur les plans national, bilatéral et multilatéral pour empêcher l'enlèvement" d'enfants.<br>• Charte africaine relative aux droits et au bien-être de l'enfant. Articles 6, 10, 18 et 19. Article 29, les Etats prennent les mesures pour empêcher l'enlèvement d'enfants.<br>**Autres normes:**<br>• Pacte international relatif aux droits civils et politiques, art. 23 (droit à la protection de la famille) et 24 (Protection de l'enfant).<br>• Convention relative aux droits de l'enfant. Article 9: le droit à ne pas être séparé de ses parents. Article 7, le droit de l'enfant a être élevé par ses parents. Article 8, le droit de l'enfant de préserver son identité, son nom et ses relations familiales. Article 11, les Etats ont l'obligation de prendre "des mesures pour lutter contre les déplacements et les non-retours illicites d'enfants à l'étranger." Article 20. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 18 (1) et (3).<br>**Normes de référence:**<br>• Déclaration sur les principes sociaux et juridiques relatifs à la protection et au bien-être des enfants, envisagés surtout sous l'angle des pratiques en matière d'adoption et de placement familial sur les plans national et international, qui prescrit que " Des politiques devraient être établies et des lois promulguées, si nécessaire, pour interdire l'enlèvement des enfants et tout autre acte en vue de leur placement illicite." (art. 19) | • UN.CHR, UN.Doc E/CN.4/1886/39, para. 8 à 11<br>• IACHR a indiqué le besoin d'incriminer l'enlèvement d'enfants de parents disparus ("étude sur la situation des enfants mineurs de personnes disparues qui ont été séparés de leurs parents et sont réclamés par des membres de leurs famille légitime", Rapport IACHR, 1987-988, OEA/Ser.L/V/II.74, Doc. 10, rev 1).<br>• UN.HRC, décision du 3 avril 1995, Communication 400/1990, Cas. *Mónaco de Gallicchio* (Argentine), CCPR/C/53/D/400/1990. | Il n'existe aucune disposition juridiquement contraignante au plan universel relative à l' obligation d'incriminer et de réprimer le délit d'enlèvement d'enfants de parents "disparus".<br><br>La Convention relative aux aspects civils de l'enlèvement international d'enfants peut résoudre seulement un des aspects de cette pratique, celui du transfert d'enfants de parents "disparus", c'est à dire l'enlèvement à caractère international. Ce commentaire est valable pour la Convention interaméricaine relative à la restitution internationale de mineurs. |

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| enfants | délit:<br>le délit de suppression de documents sur la véritable identité des enfants enlevés de parents "disparus"<br>et l'obligation de le réprimer | 18 (4) | Normes spécifiques<br>• La Convention interaméricaine sur la disparition forcée des personnes n'a aucune disposition sur ce sujet.<br><br>Autres normes:<br>• Convention relative aux droits de l'enfant. Article 7: le droit à un nom et à connaître ses parents. Article 8, le droit de l'enfant de préserver son identité. | • La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 18 (3)<br><br>Normes de référence:<br>• Déclaration sur les principes sociaux et juridiques relatifs à la protection et au bien-être des enfants, envisagés surtout sous l'angle des pratiques en matière d'adoption et de placement familial sur les plans national et international, qui prescrit que "Des politiques devraient être établies et des lois promulguées, si nécessaire, pour interdire l'enlèvement des enfants et tout autre acte en vue de leur placement illicite." (art. 19). "L'enfant ne doit pas, du fait d'un placement familial, d'une adoption ou de tout autre régime, être privé de son nom, de sa nationalité ou de son représentant légal, à moins qu'il n'acquière par là même un nouveau nom, une nouvelle nationalité ou un nouveau représentant légal." (art. 8) Et que "Le besoin de l'enfant placé dans une famille nourricière ou adopté de connaître ses antécédents familiaux doit être reconnu par les personnes qui le prennent en charge, à moins que cela n'aille à l'encontre de ses intérêts bien compris." (art. 9) | • IACHR a indiqué le besoin d'incriminer la suppression de documents sur la véritable identité des enfants enlevés de parents "disparus" ("étude sur la situation des enfants mineurs de personnes disparues qui ont été séparés de leurs parents et sont réclamés par des membres de leurs famille légitime", Rapport IACHR, 1987-988, OEA/Ser.L/V/II.74, Doc. 10, rev 1).<br>• UN HRC, décision du 3 avril 1995, Communication 400/1990, Cas. *Mónaco de Gallicchio* (Argentine), CCPR/C/53/D/400/1990. | Il n'existe aucune disposition juridiquement contraignante au plan universel relative au délit de suppression de documents sur la véritable identité des enfants enlevés de parents "disparus" et à l'obligation de la réprimer |

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| Enfants | Restitution de l'enfant à sa famille d'origine | 18 (1) | **Normes spécifiques:**<br>• Convention relative aux droits de l'enfant. Articles 9 (le droit à ne pas être séparé de ses parents) et 8 (le droit de l'enfant de préserver ses relations familiales).<br>**Normes de référence:**<br>• La Convention relative aux aspects civils de l'enlèvement international d'enfants. En cas d'enlèvement et de transfert à l'étranger d'un enfant, en violation du droit de garde, la Convention établi une procédure de réclamation et de rapatriement de l'enfant (arts 8 et suivants). Le principe, avec quelques dérogations, est celui du retour de l'enfant à la personne qui exerçait le droit de garde.<br>• La Convention interaméricaine relative à la restitution internationale de mineurs. Cette Convention est très proche à la Convention relative aux aspects civils de l'enlèvement international d'enfants. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 18 (1)<br>**Normes de référence:**<br>• Déclaration sur les principes sociaux et juridiques relatifs à la protection et au bien-être des enfants, envisagés surtout sous l'angle des pratiques en matière d'adoption et de placement familial sur les plans national et international, qui prescrit que "L'intérêt prioritaire de l'enfant est d'être élevé par ses parents naturels" (art. 2); | | Il n'existe aucune disposition juridiquement contraignante au plan universel sur ce problème.<br>La Convention relative aux aspects civils de l'enlèvement international d'enfants apporte une solution, mais limité au cadre l'enlèvement à caractère international. Ce commentaire est aussi valable pour la Convention interaméricaine relative à la restitution internationale de mineurs. |
| enfants | Entraide des Etats: pour la recherche, identification et localisation et retour des enfants | 18 (2) | **Normes spécifiques:**<br>• La Convention interaméricaine sur la disparition forcée des personnes a une clause générale dans le cas de transfert et/ou rétention d'enfants à un autre Etat (art. XIII)<br>**Normes de référence:**<br>• La Convention relative aux aspects civils de l'enlèvement international d'enfants, article 7, dans les cas de le transfert et rétention illicites d'enfants à l'étranger.<br>• Convention interaméricaine relative à la restitution internationale de mineurs.<br>**Autres normes:**<br>• Convention relative aux droits de l'enfant. Article 11 (b). Les Etats favorisent la conclusion d'accords pour lutter contre les déplacements illicites d'enfants à l'étranger. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 18 (4) | | Il n'existe aucune disposition juridiquement contraignante au plan universel sur ce problème.<br>Néanmoins dans certains cas, la Convention relative aux aspects civils de l'enlèvement international d'enfants (article 7) et la Convention interaméricaine relative à la restitution internationale de mineurs peuvent apporter des réponses. |

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| Enfants | Adoption<br>Révision et annulation d'adoption d'enfants enlevés | 18<br>(3) | **Normes spécifiques:**<br>• aucune<br><br>**Autres normes:**<br>• Convention relative aux droits de l'enfant. Art. 21 règle de manière générale l'adoption d'enfants, sans aborder explicitement le problème de l'adoption d'enfants enlevés.<br>• Charte africaine relative aux droits et au bien-être de l'enfant. L'article 24 règle de manière générale l'adoption d'enfants, sans aborder explicitement le problème de l'adoption d'enfants enlevés. | **Normes spécifiques:**<br>• La Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 18 (2)<br><br>**Normes de référence:**<br>• Déclaration sur les principes sociaux et juridiques relatifs à la protection et au bien-être des enfants, envisagés surtout sous l'angle des pratiques en matière d'adoption et de placement familial sur les plans national et international, articles 13 à 24. Art. 19: "Des politiques devraient être établies et des lois promulguées, si nécessaire, pour interdire l'enlèvement des enfants et tout autre acte en vue de leur placement illicite." | • IACHR a indiqué le besoin de réviser et de modifier les normes et procédures d'adoption d'enfants enlevés de parents "disparus" ("étude sur la situation des enfants mineurs de personnes disparues qui ont été séparés de leurs parents et sont réclamés par des membres de leurs famille légitime", Rapport IACHR, 1987-988, OEA/Ser.L/V/II.74, Doc. 10, rev 1). | Il n'existe aucune disposition juridiquement contraignante au plan universel qui aborde et résout le problème des adoptions d'enfants enlevés, de parent disparu, notamment en ce qui concerne la révision et annulation de ces adoption. |

Instruments internationaux utilisés:

A. Instruments à caractère universel:

A,1. Traités

Pacte international relatif aux droits civils et politiques
Statut de Rome de la Cour Pénale Internationale
Convention relative aux droits de l'enfant
La Convention relative aux aspects civils de l'enlèvement international d'enfants, de La Haye, du 25 octobre 1980
Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants
Convention relative au statut des réfugiés
Protocole relatif au statut des réfugiés
Convention pour la prévention et la répression du crime de génocide
Convention sur l'imprescriptibilité des crimes de guerre et des crimes contre l'humanité
Convention de Genève relative à la protection des personnes civiles en temps de guerre
Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux (Protocole I)

A,2. Autres instruments

Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et protéger les droits de l'homme et les libertés fondamentales universellement reconnus
Déclaration sur les principes sociaux et juridiques applicables à la protection et au bien-être des enfants, envisagés surtout sous l'angle des pratiques en matière d'adoption et placement familial sur les plans national et international (UN GA, Résolution 41/85, de décembre 1986)
Ensemble de règles minima pour le traitement des détenus
Ensemble de principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement
Code de conduite pour les responsables de l'application des lois
Principes directeurs applicables au rôle des magistrats du parquet

Déclaration des principes fondamentaux de justice relatifs aux victimes de la criminalité et aux victimes d'abus de pouvoir
Principes fondamentaux relatifs à l'indépendance de la magistrature
Déclaration sur la protection de toutes les personnes contre les disparitions forcées
Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions
Déclaration sur l'asile territorial
Principes de la coopération internationale en ce qui concerne le dépistage, l'arrestation, l'extradition et le châtiment des individus coupables de crimes de guerre et de crimes contre l'humanité

**B. Instruments à caractère régional**

**B,1.Europe:**
Convention européenne d'extradition (STE N° 24)
Convention européenne sur l'imprescriptibilité des crimes contre l'humanité et des crimes de guerre
Protocole additionnel à la Convention européenne d'extradition, (STE N°86)
Règles pénitentiaires européennes

**B,2. Afrique:**
Charte africaine relative aux droits et au bien-être de l'enfant

Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa

**B,3. Amérique**

Convention Américaine relative aux Droits de l'Homme
Convention interaméricaine sur la disparition forcée des personnes
Convention interaméricaine pour prévenir et punir la torture
Convention interaméricaine d'extradition relative à l'extradition
Convention sur l'Asile Territorial
Convention interaméricaine relative à la restitution internationale de mineurs

**C. Projets d'instruments internationaux utilisés:**

Projet de Code des crimes contre la paix et la sécurité de l'humanité
Projet d'Ensemble de principes pour la protection et la promotion des droits de l'homme par la lutte contre l'impunité, Principes 40 à 45 (UN Doc E/CN.4/Sub.2/1997/20)
Projet de Principes fondamentaux et directives concernant le droit à un recours et à une réparation des victimes de violations du droit international relatif aux droits de l'homme et du droit international humanitaire ( UN Doc E/CN.4/2000/62, dernière version)

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Agenda item 9

## QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

### Note verbale dated 7 March 2002 from the Permanent Mission of Azerbaijan to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of the Republic of Azerbaijan presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit herewith the texts of a statement of the Parliament of the Republic of Azerbaijan, an appeal to the United Nations by the surviving inhabitants of Khojaly and an appeal to the peoples of the world, heads of States, Parliaments and international organizations by the Chairman of the Supreme Spiritual Council of the Peoples of the Caucasus on the occasion of the tenth anniversary of the genocide in Khojaly.

The Permanent Mission would highly appreciate the dissemination of the above-mentioned texts* according to the established procedure of the United Nations.

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* Reproduced as received, in English and Russian only.

GE.02-11968 (E) 260302

Annex *Unofficial translation from Azerbaijanian*

# STATEMENT

## of the Milli Mejlis (Parliament) of the Republic of Azerbaijan on the Tenth Anniversary of Khojaly Genocide

These days the tenth anniversary of Khojaly genocide is being commemorated in Azerbaijan with profound grief. This brutal and merciless genocide act entered the history of humankind as one of the awful terror events.

On 26 February 1992 the armed formations of the Republic of Armenia, the local Armenian militants in Nagorno-Karabakh and 366 motor-shooting regiment of the former Soviet Army perpetrated act of genocide, indelible disgrace to the humanity, devastating the city of Khojaly of Nagorno-Karabakh – the integral part of Azerbaijan. Within several hours 613 civilians, including 63 children, 106 women, 70 old people were brutally killed, being subjected to unbearable tortures only just because they were Azerbaijanians, 487 people were heavily injured, 1275 inhabitants – helpless old people, children, women were taken as hostages and exposed to unbelievable sufferings, abuses, insults. The Armenian militants skinned the scalps, cut off different organs of the people they killed, put out the eyes of the small children, ripped the abdomens of the pregnant women, buried or burnt alive people.

The criminal neglect of Ex-President Ayaz Mutallibov and other leaders of that time created conditions for the Armenian nationalists to perpetrate this awful tragedy. As a consequence of the mutual accusations and political strife between the opposition and the power, the defense of Khojaly was not duly organized and no help was given to the civilians of the city.

The traits and scope of the terrible crime perpetrated in the city of Khojaly witnesses the entire conformity of this act of genocide with the provisions set forth in the Convention "On Prevention and Punishment of Crime of Genocide" adopted by the UN General Assembly resolution 260 (III) dated December 9, 1948.

Being the manifestation of the terror policy against the independence and territorial integrity of Azerbaijan, this mass and cruel massacre is a brutal crime committed against not only the Azerbaijanians, but also all the

humanity. While perpetrating this genocide in Khojaly the Armenian nationalists intended to frighten the Azerbaijanian people defending their primordial lands from invaders, to strangle their will of struggle.

Unfortunately, at the end of the XX century when the civilized co-existence dominating among the states, the fact of violation of the territorial integrity of Azerbaijan, the expansionist war and ethnic cleansing conducted by the Republic of Armenia with an aim to realize its territorial claims to the neighboring country was ignored by the world community and no efficient international measures have been taken to curb the aggressor.

It is because of the impunity of occupant Armenia 20 per cent of the territory of our country – Nagorno-Karabakh and 7 adjacent districts have been occupied by the Armenian armed forces, over 1 million Azerbaijanians have been driven out from their primordial homes.

Ignoring the UN Security Council's four resolutions (822, 853, 874 and 884) concerning the withdrawal of the occupant forces from the territories of the Republic of Azerbaijan, the documents of the Parliamentary Assembly of the Council of Europe, Budapest, Lisbon and Istanbul summits of the OSCE the Republic of Armenia refuses to recognize the territorial integrity of Azerbaijan. The camps were set up in the territory of Nagorno-Karabakh in order to train the terrorists both from Armenia and the other countries and to perpetrate new crimes against the people of Azerbaijan. The proceeds made from drug trafficking and circulation, trafficking in arms are being used here for terror purposes.

The genocide and terror against the people of Azerbaijan and other neighboring countries has become a state policy in Armenia. All the conditions have been created in this country for unrestricted functioning of the local and international terror organisations using all the vile means in order to carry out the purposes of the Armenian nationalists.

Within a period more than the past hundreds years several generations of the Armenian people were brought up in the spirit of nationalistic superiority, hostility against the Azerbaijanian and other peoples. The tragic results of this hatred ideology are well known from the history.

Since the end of the XIX century under the protection of powerful states the Armenian nationalists pursued the delirious idea of creating "The Great Armenia", killed hundreds of thousands innocent Azerbaijanians perpetrating mass terror acts and massacres in Caucasus with an aim to

conduct cleansing of the indigenous people in the claimed territories. In 1905-1907 in Iravan and Zangazur (nowadays in the territories of the Republic of Armenia), Tiflis, Baku, Nakhchivan, Ganja, Karabakh, in 1918-1920 in Baku, Shamakhy, Guba, Mughan and Lenkoran the civilians were brutally massacred.

The hostile policy against the Azerbaijanian people was also continued during the Soviet power. With the help of the pro-Armenian leadership of the USSR about half million Azerbaijanians were deported or driven out, hundreds of Azerbaijanians were killed on the ground of their nationality on a short period of time in 1948-1953, as well as in 1988-1989. As a result of this bloody and brutal policy of Armenians over two million Azerbaijanians were subjected to ethnic cleansing and genocide in different times. Today there is no Azerbaijanian residing in Armenia. Armenian nationalists achieved their aim and turned Armenia to a mono-ethnic state.

From the very beginning the genocide and deportation policy against Azerbaijan was followed by a large-scale information war. With the efforts of the Armenian "scientists" the whole history of the Caucasus was forged, the Armenians' history was exaggerated and presented as an ancient history, severe moral aggressive company was conducted against the Azerbaijanians. The events taking place in the Caucasus was intentionally distorted and "suffering, miserable and suppressed Armenian people" image was created to deceive the world community. The Armenian nationalists made up an idea as if they were subjected to genocide in 1915 in order to veil the policy of hostility and genocide perpetrated against the people of Azerbaijan, to justify their territorial claims against the neighboring states and as well as the expansionist war and the Armenian international terrorism that they chose as a means for realizing these claims. Thereby this genuine aggressor and criminal tries to confuse the international community presenting itself as a victim.

It is very strange that, the parliaments of some countries closing their eyes to the real genocide fact known as Khojaly tragedy, took the legend of "Armenian genocide" up to discussion, even adopted unjust decisions ignoring the historical truths. This is one of the reasons why the Armenian side brought to naught till today the efforts of settlement of the Armenian-Azerbaijanian, Nagorno-Karabakh conflict by peaceful means.

The Milli Majlis of the Republic of Azerbaijan believes that the world community should finally call the aggressor by its name, help to liberate

the Azerbaijani territories occupied by the Republic of Armenia and return the refugees and internally displaced people to their native lands.

The Milli Majlis of the Republic of Azerbaijan calls on the United Nations Organisations, the Organisation for Security and Cooperation in Europe, the Council of Europe, the Commonwealth of Independent States and other international organisations, the parliaments and the governments of the world countries to recognize and condemn Khojaly genocide against the Azerbaijanian people organized by the leadership of the Republic of Armenia and perpetrated by the Armenian nationalists, who with its help illegally seized the power in Nagorno-Karabakh, spare no effort for just solution of the Armenian-Azerbaijanian, Nagorno-Karabakh conflict on the basis of the norms and principles of international law.

The terrible crimes such as Khojaly genocide should not stay unpunished. The Milli Majlis of the Republic of Azerbaijan states that the State of Azerbaijan will ensure the restoration of its territorial integrity using all the existing opportunities, achieve the genuine international legal-political assessment of Khojaly tragedy and duly punishment of its ideologists, organizers and executors.

**The Statement was adopted at the meeting of the Milli Majlis on 26 February 2002**

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COMMISSION ON HUMAN RIGHTS
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Agenda items 9, 11 and 18

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD**

**CIVIL AND POLITICAL RIGHTS**

**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS**

Letter dated 19 March 2002 from the Permanent Representative of Singapore to the United Nations Office at Geneva addressed to the Chairperson of the fifty-eighth session of the Commission on Human Rights

I would like to respond to the allegations made by the Asian Legal Resource Centre (ALRC) against the Singapore Government on the use of the Internal Security Act (ISA), prosecution and juridical system, defamation charges against opposition leaders and amendments to the Broadcasting Authority Act. These are contained in the four documents submitted by the ALRC to the 58th CHR – E/CN.4/2002/NGO/65, E/CN.4/2002/NGO/75, E/CN.4/2002NGO/78 and E/CN.4/2002/NGO/87.

I would like to request that this letter* be circulated as an official document of the 58th Session of the Commission on Human Rights under agenda items 9, 11 and 18.

(Signed) Vanu Gopala MENON
Ambassador
Permanent Representative

* Reproduced as received, in English only.

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**ANNEX**

The Singapore Government is surprised that the ALRC had made such baseless and unfounded allegations despite the fact that Singapore Government has a good track record in up-keeping the rights of our citizens. Singapore's success in building a safe and democratic society is well documented. Since Independence in 1965, Singapore has built a multiracial society based on freedom and equality, regardless of race, language and religion. It accords a high importance to the respect for the rule of law. The separation of powers between the executive and judiciary is enshrined in the country's constitution. The independence and integrity of our judiciary have consistently been ranked highly in many international surveys. We are therefore astounded by the allegations made by the ALRC and would want to set the record straight on its insinuations that this was otherwise.

Internal Security Act

The ALRC has criticized Singapore's Internal Security Act (ISA) as a tool the Government has used to suppress political opposition and been abused to instil fear, and even torture detainees. These criticisms are unfounded and must be exposed for what they really are - baseless allegations. The ISA is a legacy of the British colonial governance. It is used to counter security threats such as racial and religious extremism, espionage, terrorism and subversion. There are important checks and balances built into the Act to ensure that the ISA is not abused.

*Relevance of ISA in Singapore*

Our own experience with communal violence in the early years of our nationhood has shown that political stability and communal peace are not necessarily the natural order of things for a small, multi-racial and religious city-state like Singapore. Like all states, a Government's paramount duty is to ensure that the country's stability and security are not compromised. The ISA, like all laws and institutions of any sovereign and independent state, has evolved in response to our own needs, circumstances and socio-political realities.

The ISA is a critical legal instrument of last resort to counter security threats such as racial and religious extremism, espionage, terrorism and subversion. Contrary to what the ALRC had alleged, the ISA is not used to suppress political opposition but to counter extremist groups or radical groups that threaten Singapore's internal security or do harm to our people. It is not always practical to deal with such threats under the normal parameters of the criminal laws. The very character of covert or clandestine activities would make disclosure of intelligence collected as evidence in an open trial a threat to the sources of intelligence. It will also compromise covert methods of investigation. Moreover, in cases involving racial and religious extremism, the process of the trial itself would provide the accused with a public forum to inflame communal violence and conflict.

*ISA and Political Opposition*

The ISA has never been used against anyone who operates by constitutional means. Action has only been taken against persons who participate in unlawful acts against public order and in subversive activities. It was used in the past against communists and their supporters,

including some politicians, who resorted to violent means to overthrow the lawfully elected government. These people rejected parliamentary elections, and had taken their struggle to the streets. It is an established fact that communist elements had in the past undertook violent and illegal acts, including planting bombs and staging arson attacks. For instance, a booby-trapped bomb they had planted blew up and killed a 6-year old British girl, Katty Salter, in 1970. In more recent years, the ISA has been used to neutralise the activities of terrorist or terrorist-linked organisations in Singapore, including the Liberation Tigers of Tamil Eelam and more recently the Jemaah Islamiyah, an extremist group with links with the Al Qaeda network, which had planned to bomb several foreign embassies and major installations in Singapore.

We fail to comprehend ALRC's allegation that the ISA is used to suppress political opposition in Singapore when the fact is opposition politicians and civil society activists are not deterred from pursuing their political goals in Singapore. Opposition politicians continue to mount vigorous political attacks against the Government in Parliament, at public forums, in publications and on the Internet, and campaign actively to win political support to enter Parliament. No opposition Member of Parliament in Singapore today has ever been detained under the ISA.

*Safeguards Against Abuse*

The ISA is not a law solely about preventive detention. It also has provisions allowing the prosecution of offenders who are involved in activities such as printing and dissemination of subversive documents, malicious and false information with intent to create public alarm or tensions, and the formation and development of illegal militia. The Government recognises that the ISA is a powerful law, which impacts greatly on the individuals arrested and detained. For this reason, it is used sparingly and only at the last resort. Whenever the circumstances make it practicable, the Government would prefer to prosecute an offender in court either via the ISA or any other appropriate law.

The period of detention without trial is not indefinite and is subject to important checks and balances provided under the Act. No person may be detained for more than two years at a time. Each detainee has a right to make representations against his Order of Detention (OD) to the ISA Advisory Board, comprising a Supreme Court judge and 2 prominent citizens appointed by the President of Singapore. The detainee is also free to engage a lawyer for this purpose. In hearing detainees' representations, the Advisory Board can examine Internal Security Department (ISD) officers and statements of witnesses as well as review the evidence and investigation. It considers representation from detainees within 3 months of the date of the OD and subsequently makes recommendations to the President for consideration. No person shall be detained or further detained without the President's concurrence. The Advisory Board is further required to undertake a yearly review of continued detention against a person and make further recommendations to the Minister for Home Affairs.

Besides the Advisory Board, there are also other safeguards in place to prevent any physical assault of detainees. A doctor is present to examine the detainee before and after each interview session. All examinations are recorded on the detainee's medical card and the doctor makes a daily entry of any complaint by the detainee. Where a doctor has reported the discovery of any injury to the prison authority, such cases would be investigated.

In addition, there are provisions under the ISA for a Board of Inspection to be appointed. This Board comprises Justices of Peace and volunteers of community and civic groups. They make unscheduled visits to the detention centre and are entitled to inspect the place and speak to the detainees. Detainees are able to convey requests and complaints to these Board members who will channel them and any other recommendations to the Government. There are currently 56 members on the Board, including representatives of all major ethnic and religious communities in Singapore.

Defamation Charges Against Opposition Leaders

The ALRC had alleged in its document E/CN.4/2002/NGO/75 that ruling party politicians in Singapore often bring defamation charges against opposition leaders and demand huge compensation payments. It cited the case of Mr J B Jeyaretnam, who was declared bankrupt in January 2001 as a result of fines in defamation proceedings brought by the President. This is inaccurate. To set the record straight, Mr Jeyaretnam was not sued by the President of Singapore for defamation. The defamation proceedings, which led to Mr Jeyaretnam's bankruptcy, were brought by the Organising Committee of the 1995 Tamil Language Week, the majority whom are not politicians. Singapore's laws and Constitution enshrine the freedom of speech and expression. As in all democratic societies, this is subject to laws of libel. Opposition politicians themselves have brought defamation proceedings against Government politicians (who had apologised and paid damages). Opposition politicians have also sued other politicians and other defendants.

Broadcasting Authority Act

In the same document E/CN.4/2002/NGO/75, the ALRC stated that the Singapore Government had amended Section 42 of the Broadcasting Authority Act to prevent foreign broadcasting service from engaging in the domestic politics of Singapore. It suggested that the Singapore Government had infringed on the freedom of expression of the foreign broadcasters. These allegations are similarly without any basis.

The amendment to the Singapore Broadcasting Authority Act is to allow Singapore Broadcasting Authority (SBA) to act against a foreign broadcasting service which interferes with the domestic politics of Singapore. It is true that under the Act the Authority has the power to restrict distribution of the foreign service in Singapore. However, the aim is not to ban information but to ensure that those channels, which engage in local politics, do not profit from distribution of their services. As outsiders, they can report on Singapore. They can do so factually and accurately, without bias or distortion. However, they should not campaign for or against local political issues, or try and educate our people on how best Singapore can be governed. Other countries have also recognised the need for such legal safeguards to prevent external interference. For example in Canada, the Canada Elections Act 2000 prohibits the use of a broadcasting station outside Canada by any person for the purpose of influencing an election in the country.

Singapore's Prosecution and Juridical System

In its document E/CN.4/2002/NGO/65 and E/CN.4/2002.NGO/87, the ALRC has again made baseless and sweeping criticisms of the Singapore prosecution and juridical system without any substantiating facts. The Singapore prosecution system comprises a corps of independent and professional prosecutors selected for their technical competence, and is headed by an Attorney-General which is politically neutral and independent. The Constitution of the Republic of Singapore provides that the Attorney-General has the same security of tenure as a Judge of the Supreme Court. The Singapore judiciary is highly regarded and internationally recognised for its strong professionalism and integrity and has consistently been ranked highly in many international surveys.

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# QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

## Note verbale dated 27 March 2002 from the Permanent Mission of Myanmar to the United Nations Office at Geneva addressed to the secretariat of the fifty-eighth session of the Commission on Human Rights

The Permanent Mission of Myanmar to the United Nations Office and other International Organizations at Geneva presents its compliments to the secretariat of the fifty-eighth session of the Commission on Human Rights and has the honour to enclose, herewith, a copy of a memorandum concerning the situation of human rights in Myanmar.

The Permanent Mission would be grateful if the afore-mentioned document* could be circulated as an official document of the fifty-eighth session of the Commission on Human Rights under agenda item 9.

* Reproduced as received, in English only.

GE.02-12057 (E)

ENG

Annex

## *Myanmar today in a nutshell*

*A good understanding of 5 fundamental phenomena --- 3 specific characteristics, a vision and one political process in Myanmar --- is essential to a full and proper appreciation of the current situation in Myanmar.*

***The first characteristic specific to Myanmar*** *is that Myanmar is a multi-racial society with 135 national races.*

***The second specific characteristic*** *is its strategic geopolitical position, forming a link between South Asia and South-East Asia and situated alongside the biggest and most powerful Asian neighbouring countries.*

***The third specific characteristic*** *is that the problem of insurgency and that of maintaining peace and tranquillity have bedevilled the country since its independence in 1948 until recently.*

***A vision*** *shared by all the Myanmar people is to establish a peaceful, modern and developed democratic state.*

***The most important current political process,*** *taking place in Myanmar, is the constitution- making process through the National Convention that will lead to the emergence of a strong and enduring state constitution and the subsequent election of a democratic government in accordance with the new constitution.*

*Because of these characteristics specific to Myanmar, the following are the foremost national tasks,*

- ***to safeguard and consolidate unity and solidarity among the national races;***
- ***to maintain peace and tranquillity throughout the country;***
- ***to safeguard non-disintegration of the Union and sovereignty and to pursue an independent and active foreign policy.***

*The concrete achievements, accomplished by the State Peace and Development Council since its advent in 1988, include, among other things,*

- ***the prevalence of peace and tranquillity throughout the country;***
- ***an unprecedented degree of national unity and reconsolidation;***
  *17 armed groups, except one faction, have returned to the legal fold and joined hands with the Government. Only one faction of the KNU remains outside the legal fold.*
- ***the significant economic progress, and the social and cultural uplift and the improvement of the living standards of the people;***
  *Myanmar's economy has registered a healthy average growth rate of around 8.4 percent in second five-year plan for 1996-1997 to 2000-2001.*
- ***the infrastructure-building on an unprecedented scale throughout the whole country;***
  *The Government has completed to-date 170 new bridges including 9 new major river-crossing bridges,*
  *129 new dams, 120 new hospitals, 6223 new basic education schools, 112 new universities and colleges, and 4239 miles of road, to mention just a few statistics; and*
- ***the border area development on an unprecedented scale for national races living in frontier areas.***

*Inspired by the aforementioned vision, the Myanmar Government and the people are laying down a firm foundation to establish a peaceful, modern and developed democratic state through the process of the National Convention. They are also striving with verve and vigour to develop the country and to improve the well-being and political, economic and social life of the entire nation. In so doing, they are, indeed, most effectively protecting and promoting fundamental human rights and advancing the right to development.*

*The following memorandum offers a fairly comprehensive and yet concise overview of the positive developments in Myanmar.*

The present memorandum has been prepared for the ready reference of the members of the Commission on Human Rights and observer delegations in order to enable them to better understand the real situation prevailing in the Union of Myanmar.

It is hoped that the participants of the fifty-eighth session of the Commission on Human Rights will take into account these specific characteristics of Myanmar and the positive developments in the country and will view this question from a more objective and balanced perspective.

## Introduction

The fifty-seventh session of the Commission on Human Rights adopted on 18 April 2001, resolution 2001/15 on the situation of human rights in Myanmar. Resolution 2001/15 decided to continue its consideration of the situation of human rights in Myanmar at the fifty-eighth session of the Commission on Human Rights. The resolution, inter alia, urged the Government of the Union of Myanmar to take certain measures in some areas of concern to the international community.

Following the adoption of the draft resolution, the Permanent Representative of the Union of Myanmar H.E. U Mya Than stated that the resolution welcomed the positive steps taken by the Government of Myanmar for promotion and protection of human rights in the country and that the resolution, among other things, took special note of the establishment of the Human Rights Committee that would pave the way for the establishment, in due course, of a full-fledged national institution.

It also welcomed the assistance of the Government of Myanmar in facilitating the exploratory visit by the newly appointed Special Rapporteur to Myanmar. It further welcomed the releases from detentions of a large number of detainees. The resolution welcomed the continued cooperation with the International Committee of the Red Cross.

At the same time, the Permanent Representative pointed out that the resolution still was very much negative resolution and contained many unfounded allegations such as making sweeping conclusion that the composition and the working procedures of the National Convention do not permit members-elect of the Pyithu Hluttaw (Parliament), and representatives of national races to freely express their views and to the effect that they do not really contribute to the process of democratization.

As such, the Permanent Representative stated that the Myanmar delegation dissociated itself from those negative elements in the draft resolution as well as from the draft resolution as a whole.

This, however, does not alter Myanmar's consistent policy of cooperating with the United Nations to the fullest extent possible. It also continues to demonstrate its sensitivity to and the understanding of the concern of the international community.

# Significant positive developments during the period under review

During the period under review by the fifty-eighth session of the Commission on Human Rights, Myanmar has indeed, witnessed a number of significant positive developments such as restoring national consolidation and peace and stability in the nation; developing economic infrastructures; promoting the economic strength; developing the human resources of the nation; uplifting the social sector; and extending the regional and international cooperation, which are outlined below for favour of careful consideration by the member and observer delegations.

## *Efforts for the prevalence of peace and stability*

Peace and development are inseparable and mutually reinforcing. Development is not achievable in any country without first establishing peace.

Drawing lessons from the post-independence history of the country replete with the armed insurrections of the ethnic groups, resulting primarily from the divide-and-rule policy of the British colonial administration during the colonial era, the Government strongly believes that lasting peace can be achieved only through the strengthening of the unity among the national races. This belief led the Government to undertake energetic efforts to establish peace with the armed groups of the national races as a matter of top priority. Accordingly, 17 armed groups have now returned to the legal fold and joined hands with the Government, thereby the Government has been able to maintain peace and stability throughout the country. This is the first time in many decades that peace can be maintained for so many years on end.

Efforts are under way to persuade the sole remaining armed group --- one faction of the Karen National Union (KNU) --- to follow the example of other groups and return to the legal fold. This faction of the KNU is at present, still engaged in a futile armed struggle against the Government and still remains intransigent to the overtures for peace.

The KNU which was declared illegal in 1949, has undergone many changes both in its leadership and political programme. Currently, it masquerades as a democratic force and is trying to destabilize the peace and stability achieved so far in the border areas by instigating those armed groups which had already returned to the legal fold to reject the efforts of the Government and people to build a peaceful, prosperous and democratic nation.

However, the fighting strength of the remaining faction of the KNU has considerably declined since some five years ago when most of its ranks and files, who were dissatisfied with the leadership and who wanted peace, broke away from the main organization. It has lost all of its major camps in the country proper and its movements are now limited to operations in the form of small mobile units in certain areas across the border.

land and virgin land, granting large land holdings to private companies. As a result, the private sector alone has added 1.1 million acres to the existing arable land. At present, there are 4.9 million irrigated acres up from 2.52 million acres in 1988-89. At the same time, with a view to provide sufficient water to the agriculture sector, the Government has instituted a substantial programme for the construction of new reservoirs and dams, resulting in considerable increase in irrigated areas. Up to now the Government has constructed 129 dams. Through these efforts for the promotion of agriculture productivity, the Government is aiming to increase its export of rice and to contribute to food supply both domestically and regionally.

The Government has launched a comprehensive plan for the development of border areas and national races. Up to the end of 2001, altogether Kyats 12,188 million had been spent in transportation sector in border areas. In education sector, 366 primary schools, 48 middle schools, 19 high schools, 17 youth training schools and 12 women's domestic science training schools have been opened. With respect to the health care for the national races in border areas, 46 hospitals, one township health centre, 74 clinics, 18 rural health centres and 30 sub-rural health centres have been opened since 1988.

## *Suppression of narcotic drugs*

The border areas of the Union of Myanmar have lagged behind other parts of the country in development owing to inadequate infrastructure and internal insurgency problems in the past. It is in these areas that most of the country's 135 national races reside. As the terrain is rough and mountainous, most areas are hard to reach. So the local populace relied totally on poppy cultivation which, unlike other perishable produce, does not need to depend on roads for transports. Years of ignorance made them insensitive in the past to the effects that opiate drugs have on the society and mankind.

Needless to say, the poppy cultivation was introduced into the country by the colonialists as it is not indigenous to Myanmar. Opium dens were even allowed to open freely in the country despite strong objection from the people, Buddhist clergy and the American Baptist missionaries. Later, in the early 1950s, the Kumintang (KMT) troops which were forced out of the Southern Yunan Province of China by the People's Liberation Army of the People's Republic of China, took refuge and established base camps in Myanmar territory. They were encouraged, supported and financed by a western power with the aim of blocking further communist expansion in Asia. In the aftermath of the Second World War, the CIA encouraged the production of opium in the region to help finance its own activities and its KMT allies. The proceeds were also used to pay for the considerable arsenal of arms supplied to the KMT and other various groups in Myanmar. No doubt, these activities also sowed the seeds of the current drug production problems in the border areas of Myanmar. After the bulk of the KMT were flown out of Myanmar, remnants of two divisions of the KMT remained active in those areas until 1996. They encouraged not only poppy cultivation in the golden triangle area as well as on the Myanmar-Yunan (PRC) border, but were also responsible for the refining of opium into heroin and creating heroin markets in the region.

A growth rate of slightly over 10 percent has been registered in the year 2000-2001. As adequate infrastructure is a precondition for the sustained development of the country, the Government is focusing its efforts on infrastructure development. The Government has completed to-date 170 bridges including 9 major river-crossing bridges, 129 dams, 120 hospitals, 112 universities and colleges, 6223 new basic education schools, 4239 miles of road, 998 miles of new railroads, and 6 new airports to mention just a few statistics.

For the economic development of the country, another sector to which the Government is paying particular attention is the agriculture sector. The current economic system of Myanmar is mainly based on agriculture; the agricultural sector, on which over 70 percent of the nation's population are relying, is also based on the rural areas. Till now, the first short-term four-year national economic plan and the second five-year short-term national economic plan had been implemented with the participation of all available forces of the nation. Due to the public participation, the targets of the respected sectors of the plans were over-fulfilled.

At present, the third five-year short-term national economic plan from 2001-2002 to 2005-2006 is being implemented for continued progress of the national economy. The aims of the plans are: to extend agro-based industries; to develop the power sector in accord with the growing demand of the industrial sector; to extend the agricultural and livestock breeding sectors to ensure domestic sufficiency and to boost exports; to develop other sectors; to extend health and education tasks and to develop the rural areas for progress of human resources.

Rural area development sector was among the objectives of the third short-term five-year plan being implemented. Priority is given to the development of rural areas where over 70 per cent of the population live. Requirements of the villages are to be fulfilled. Transport and communications, water supply, development of agriculture, livestock breeding, education and health are main requirements of rural areas. With the aim of poverty reduction in rural areas, these basic practical needs are to be fulfilled in cooperation with the entire people.

Accordingly, the guidances have been given to carry out five rural development tasks namely agriculture, sufficiency of drinking water, better transportation, uplift of health and education starting from 2000-2001 with the assistance of the respective departments and local people. Altogether 484 tube wells, dams and lakes, 170 rural roads, 50 bridges, 679 schools and 119 rural health care centres have been built in 2001-2002.

The agricultural sector of Myanmar accounts for 38 percent of GDP, 40 percent of total exports and employs 63 percent of total labour force. Therefore, agriculture sector occupied a place of importance in Myanmar economy. With a favourable ratio of population to land and abundant water resource, it is also an area Myanmar has a marked comparative advantage. For this reason, the first of the four national economic objectives of the Government is the development of agriculture as the base for all-round development of other sectors of the economy as well. To promote agriculture productivity, the Government has laid down five strategic measures under which it is carrying out an extensive programme of land reclamation in wet

On the other hand, family members, sympathizers and supporters of the KNU are still based in the so-called refugee camps established across the border since the 1980s to elicit the support and sympathy of the international community. These camps are used by the KNU as a safe haven as they store their weapons there and launch attacks on the Government and the local populace of Myanmar.

It must be listed out that unfounded allegations and accusations against the Government emanate from these camps and also from the pocket areas in the frontier areas of the country where KNU remnant still hide. These allegations were quoted by those who bear ill-will against the Government as "credible sources" of news regarding Myanmar and thus deliberately misleading the world community.

However, the Government, with sincerity and patience still extends an olive branch to the remaining faction of KNU and is ready to receive them back, including those living in the so-called refugee camps. In fact, in response to the goodwill gestures of the Government , one faction of the KNU -- the Democratic Karen Buddhist Association (DKBA) -- has already returned to the legal fold. So did hundreds and hundreds of the remaining members of the KNU and they were warmly welcomed by the authorities by providing assistance. They have realized the genuine goodwill of the Government and are now participating in the regional activities. As many more are continuously coming into the legal fold, soon, the Kayin State will be a part of the development activities in the country.

Now is the time for the leader of the remaining faction of the KNU to seriously consider their main objectives for the Kayin people and to commit themselves to bring peace and prosperity to their people and to the whole nation as well. They can look at the other armed national groups who have come into the legal fold and are working together with the Government for the betterment of their respective peoples. The remaining faction of the KNU would be welcomed similarly with open arms and their aspirations to develop their own race will be realized in a peaceful manner.

## *Economic development of the country*

With the restoration of peace and stability, the Government is now able to focus on nation-building, modernization of the country and its economic, social and cultural development.

The market-oriented economic policy of the Government and its full encouragement of the private sector has led to the achievement of sustained economic growth for the country over the several past years. The country achieved an average annual growth rate of 8.4 percent against the original target of 6 percent in its five-year plan from 1996-97 to 2000-2001. Total investment increased by an average annual growth rate of 31.6 percent during the plan period. This achievement was attained relying almost entirely on the country's own resources and foreign direct investment and also without the benefit of official development assistance (ODA) and concessional loans.

Abuse and illicit trafficking of narcotic drugs bring about crimes and undesirable activities like money laundering and deterioration of the moral characters of the population. The drug issue is a major socio-economic challenge to mankind. As it is a threat to the right of the people to enjoy a decent quality of life, the Government of the Union of Myanmar has been carrying out anti-narcotics measures as a national endeavour. In so doing, Myanmar has always contributed unstintingly to the fight against narcotic drugs. Myanmar has also made great sacrifices. 776 of her soldiers sacrificed their lives and 2350 sustained injuries from the period 1988 to 1997.

The Government regards the suppression of narcotic drugs as a national task and the top priority. It has made all-out efforts for a three pronged attacks aiming at supply reduction, demand reduction and law enforcement. As stated above, certain border areas of Myanmar have totally relied on poppy cultivation in the past. To totally change this situation, the Government has decided that it must strive for the development of border areas and national races. To this end, a Central Committee for the Development of Border Areas and National Races was formed on 25 May 1989. For more effective implementation of border areas and national races development, a separate ministry was instituted on 24 September 1992 and the Law on Development of Border Areas and the National Races was promulgated on 13 August 1993. The main purpose of the Law is the total elimination of poppy cultivation through creation of alternative economic activities for the local populace.

Myanmar has drawn up and is implementing a 15-year Narcotic Elimination Plan from 1999/2000 to 2013/2014 with its own resources. The objective of the Plan is to totally eradicate the opium cultivation in 51 Townships of the Shan State, Kachin State, Kayah State and Chin State and narcotic abuse in the whole country. In implementing the Plan, the 5 priority areas are eradicating poppy cultivation, eliminating drug abuse, enforcement, organizing the local populace to participate in the activities and international relations. Opium cultivation decreased 30 per cent compared with the previous year. This received world recognition. The Government of Myanmar has invested 5613.569 million of Kyats and 150 million US dollars in its campaign against drug abuse. The problem of drugs is not confined to an individual, a race or a country. It is a problem of the whole human race. Myanmar will not waiver from this task and continue to combat this horrible scourge until it achieves its goal --- a drug-free nation.

Mongla area has been declared as drug-free zone on 22 April 1997 ---- the first such drug-free zone in the world. Arrangements are under way to establish other areas as drug-free zones one after another.

Accordingly, several areas have been declared opium-free zones and poppy cultivators have now turned to alternative crops and stepped-up law enforcement measures have led to increase seizures of narcotic drugs. From 1998 to 2001 a total of 843047.72 acres of poppy plantation were destroyed by the Government and the local populace. As crop substitution, buckwheat is being cultivated in these areas with the assistance from Japan. On the other hand, law enforcement personnel regularly seize and destroy illicit drugs and heroin refining laboratories. Members of the Diplomatic Corps and journalists are always invited to attend the large-scale destructions of narcotic drugs.

Myanmar also played host to the Fourth International Heroin Conference in Yangon in February 1999. This conference was attended by delegates from 28 countries and it contributed to enhance cooperation and understanding among nations to combat the war on drugs. While in Yangon, delegates to the Conference took part in, and witnessed the destruction of narcotic drugs in Myanmar.

One of the reasons why the authorities of Myanmar decided to accept the Conference to be held in Yangon is because Myanmar believes that with the cooperation of the international community, Myanmar's fight against narcotic drugs can and will be more effective. The Secretary General of the INTERPOL, in his message to the conference commented that *"it is high time the international community becomes acquainted with the excellent work that is being carried out in Myanmar against the illicit production and trafficking of heroin"*.

Myanmar has been continuously working together with United Nations Drug Control Programme (UNDCP) and the nations which have signed Memorandum of Understanding on narcotic drugs control and regional development. In the International Narcotic Control Board (INCB) report 2000, it was mentioned that illicit opium production in Myanmar has declined in recent years.

In 2001 INCB report it was mentioned that significant bilateral efforts are being made, for example, by Myanmar and Thailand, which intend to exchange drug liaison officers, to improve contact between drug control officers along their common border and to cooperate in combating drug trafficking at the international airports of Bangkok and Yangon. The Board welcomed that development, as it views such cooperation as an essential element in efforts to curb the substantial flow of illicit drugs between those two countries. Significant results such as the arrest of top-level drug traffickers have been achieved because of improved cross-border cooperation between China and Myanmar.

In May 2001, the Board reviewed the progress of the Government of Myanmar on recommendations made by the Board pursuant to its 1998 mission to Myanmar and in September 2001, the Board sent a mission to the country. The Board found that continuous efforts were being made to implement its recommendations following its mission to Myanmar in 1998.

It was stated that although the widespread opium poppy cultivation remains a problem in Myanmar, illicit opium poppy cultivation and opium production have decreased, drug seizures have increased and "opium-free zones" have been established over the last few years. The Board notes that the Government of Myanmar has been fully committed to the eradication of illicit opium poppy cultivation in the country and that continuous efforts have been made to deal with the situation regarding drug abuse and illicit trafficking, as evidenced by the initiation in 1999 of a 15-year plan to eliminate illicit drugs in the country.

The Board further notes that the limited resources and the low level of external assistance provided to Myanmar have had a negative impact on the Government's ability to achieve the goals set out in its eradication programme and to consolidate the gains already made. The Board therefore calls upon the international community to provide the necessary assistance to Myanmar as long as its efforts to fight against drug abuse and illicit trafficking are sustained.

While the issue of the illicit production and trafficking in heroin is being tackled, a synthetic drug in the name of *methamphetamine* has forced its way into the regional drug scene. This drug has surfaced in Myanmar just over two years ago. Anti-narcotic officials of Myanmar are cooperating with the countries and organizations in the region that have more experience and expertise for the control of this drug.

In 2001 INCB report it was mentioned that the illicit manufacture of methamphetamine remains a problem in border areas of Myanmar. The Board called on the Government to continue to cooperate with the Governments of neighbouring countries in law enforcement activities and, in particular, to make additional efforts to identify sources and routes of seized precursor chemicals and to share such information with those Governments. The Board noted the ministerial meeting on drug control cooperation between China, the Lao People's Democratic Republic, Myanmar and Thailand held in Beijing on 28 August 2001 and hoped that the drug problems in East and South-East Asia will be dealt with in a more effective way through coordinated subregional and regional mechanisms.

The United States State Department's annual report on Myanmar mentioned that 60% of opium production in Myanmar had been already decreased and the number of drug related arrests and seizures of various kinds of drugs had positively increased. The annual report also mentioned that the cooperations and initiatives with the neighbouring countries and other anti-narcotic institutions have already positively taken place, in an unprecedented profile.

The United States Opium Yield Survey Team is working closely with Myanmar officials annually for eight consecutive years including 2002 in Myanmar.

Drug menace is a global problem, requiring a global response. Accordingly there is a growing consensus of the need for concerted efforts of the world community based on the principle of shared responsibility. As for Myanmar, she is committed to the total elimination of narcotic drugs ---- be it with or without the outside assistance. The Government and the people of the Union of Myanmar will continue to abide by this commitment with dedication and will carry out the task to the end. But for those with vested interests, it would be better for them to put politics aside and work for that common goal just for the sake of millions of people around the world whose lives are threatened and affected by this drug trade.

The elimination of narcotic drugs also facilitates the alleviation of poverty in the border areas. By working for the elimination of drugs, the populace of the border areas will also achieve at the same time better health care, education and infrastructure development and better life style. Bearing

The Government firmly believes that the National Convention is the only political process suitable for Myanmar and that consensus will be achieved finally for a system which will ensure enduring peace, stability and prosperity in the country.

The Myanmar Government has managed to achieve the national reconsolidation and nation-building, an achievement which previous Governments were not able to accomplish and has also promoted peace and stability in the country. On the other hand, political and economic development is still sensitive and fragile and one false move could get the country to slide back into chaos and anarchic situation. With this in mind, it would not be difficult to understand why the government is determined to keep the momentum.

In this perspective, it is also important for the political parties in Myanmar to abide by the existing laws of the country. The Government does not interfere with the activities of the political parties when they pursue their work within the boundaries of the laws.

Like other political parties, the National League for Democracy (NLD) also enjoys all its rights and responsibilities under the existing laws. The representatives-elect of the NLD took part in the National Convention process up till November 1995. It was the representatives-elect of the NLD themselves who withdrew from the National Convention of their own accord.

Given the specific characteristics of Myanmar and the prevailing conditions in the country, there is no other way than the process of the National Convention. By convening the National Convention, we are taking progressive and systematic steps to establish a peaceful, modern and developed democratic State in accordance with the aspiration of the people of Myanmar.

The Government is committed to establish a democratic society in the country according to the aspirations of its countrymen. As the Government is transitional in nature, it does not intend to exercise state power any longer than it is necessary and this stance has been repeated time and again. It will transfer the state power to the people by convening a parliament once a firm and enduring state constitution has been adopted.

However, a constitutional process in a country can proceed only as far and as fast as circumstances permit. Myanmar is no exception, but the Government is doing its utmost for the advancement of the democratization process in the most expeditious manner.

In fulfilling its responsibility to implement the transition of the country from one political and economic system to another, the Government has to balance the political rights of one person or one political party with the rights of the whole population to live in peace and security. It also has to see the right to development of the entire population. At present, the Government views the right of the whole population to be of greater importance.

these lofty goals in mind, the Government will continue to implement the 15-year plan and will at the same time cooperate with other ASEAN countries to achieve the vision of a "Drug Free ASEAN" by the year 2020.

## *Process of democratization*

The establishment of a democratic society in the Union of Myanmar is the cherished goal of the Myanmar people. As they are fully committed to the achievement of this goal, they are now laying grounds for the emergence of such a democratic state. Such a democratic system ought to reflect the aspirations of all the 135 national races of the country. While laying the ground work for a multi-party democratic system, the Government regards itself as a transitional government for the benefit and interest of the people and the nation. In other words, it is in the process of establishing and consolidating national unity, peace, stability and all-round development in the country in order that Myanmar may become a peaceful, prosperous, modern and developed nation in a not too-distant future.

A strong and enduring state constitution is a pre-requisite for building a multi-party democratic state. Myanmar has had two constitutions since her independence from Britain. The first (1947) Constitution was drafted in haste and according to Britain's requirements. Serious flaws were embedded in it, and one of which was the question of secession of the national races after ten years of independence. The insurgency problem which still haunts the country is the legacy of this constitution. In 1962, after the military took over the state power, the 1947 Constitution was abolished and a new one-party socialist constitution came into existence in 1974. Again this constitution was abolished in 1988 for a multiparty democratic system.

The country has gone through hard times because of the way some political parties acted in the past and also due to the inherent weakness of the previous constitutions. To keep the country perpetually stable and to have a functioning democracy, it is essential for Myanmar to have a strong and enduring constitution.

With this in mind, the National Convention, a disciplined forum for political dialogue has been convening with the aim to lay down fundamental principles to be enshrined in the future state constitution. All political parties as well as representatives from all strata of society are taking part in the convention giving their opinions and discussing to finalize the state constitution that would reflect the aspirations of all the 135 national races, residing in the Union. Through open and frank deliberations, the delegates have so far managed to reach consensus on 18 chapters and 104 basic principles. At the moment, the National Convention and Working Committees of the National Convention are working on the basic principles in the matter of power sharing between the central organs of the State and those of the States and Divisions. The delegates will be able to discuss this important and sensitive issue when the National Convention reconvenes. In view of the sensitive nature and its far-reaching implications for the future of the country, it is vital for the National Convention to proceed with great caution to safeguard the interest of all national races and not to repeat the shortcomings of the previous constitutions.

Attempts from the outside to set the pace and influence direction for Myanmar would not only hinder the process of democratization but also prove to be counterproductive. However, the Government of the Union of Myanmar will continue to be resolute in its commitment to establish a genuine multi-party democracy and will not waver from the political agenda it has laid down.

## Positive developments regarding the recommendations of the ILC

The Union of Myanmar with her recorded history of over three thousand years, is rich in culture and tradition. Among the traditional customs endeavoured in Myanmar since time immemorial and which is still in practice is the contribution of labour. Myanmar nationals believe that the contribution of labour is both meritorious and conducive to mental and physical well-being.

But in the past, when insurgency problem was rampant in the country, the Armed Forces members have sometimes had to employ civilian labourers to transport equipment and supplies over difficult terrain in the remote areas during military operations. Wages and other basic needs were adequately provided to the labourers in accordance with the rules and regulations of the country. Even such use of civilian labourers by the Armed Forces is not in practice now as almost all the armed groups have returned to the legal fold. The Government does not practise or condone the practice of forced labour.

But in recent years, there had been numerous allegations of the practice of forced labour in Myanmar and also that the relevant sections of the existing Village Act and the Towns Act of 1907, a legacy from the British colonial rule, were not compatible with the Forced Labour Convention 1930 (No.29).

As a result of the review process of the two Acts to bring in line with the current situations of the country, the Home Ministry issued Order No.1/99 on 14 May 1999, which instructs the Village Tract and Ward Peace and Development Councils and other local authorities concerned not to exercise the powers under those provisions of the two Acts relating to requisition for personal services. As the Order No. 1/99 was issued under the Directive of the State Peace and Development Council, which is the law-making body of the nation, it has the full force of law.

It is important to note here that the Commission of Inquiry recommended only to bring the Village Act and the Towns Act of 1907 in line with the ILO Convention (29). The recommendations do not specify the legal modalities of accomplishing this objective. As a matter of fact this objective was accomplished by the Myanmar authorities by the promulgation of Order No. 1/99 of 14 May 1999.

As a long-standing member of the ILO, Myanmar has maintained the tradition of closely cooperating with the organization. To keep in line with this tradition, the Government of the Union of Myanmar had on 14 October 1999 invited a technical team of ILO to visit the country in order that the two sides could discuss issues of mutual interest.

Myanmar's cooperation with the ILO has been characterized by the frequent visits of the ILO Technical cooperation missions and the High Level Team (HLT).

The first TCM team led by Mr. Francis Maupain, Special Advisor to the Director-General of ILO visited Myanmar from 23 to 27 May 2000 and held wide-ranging discussions with the authorities and officials of the Government of Myanmar. The first TCM had extensive discussions on various aspects of the existing Myamar laws, prohibiting the use of forced labour, which is punishable under Section 374 of the Penal Code.

The Mission duly acknowledged in its report to the 88th ILC that the government authorities fully honoured their commitment to give the mission the necessary freedom of action to make contacts and agreed to adjust the programme of meetings with government representatives in order to allow other talks to take place.

The second TCM visited Myanmar from 20 to 26 October 2000. The TCM recognized with appreciation the comprehensive framework of legislative, administrative and executive measures taken by the Myanmar Government and implementation of the recommendations by the ILC.

Immediately following the visit of the Technical Cooperation Mission, the Government of Myanmar, with the suggestions and advises by the TCM, issued the Order Supplementing the Order No. 1/99 on 27 October 2000 by which it prohibits forced labour in the country and thereby showing to the world its seriousness and its commitment to the principles of ILO.

The TCM team indicated in its report to the 279th Meeting of the Governing Body that Myanmar Government has made progress and that there is a political will at the highest level of the Myanmar Government towards achieving a definitive solution.

The Myanmar observer representative to the 279th Meeting of the ILO Governing Body stated that Myanmar is also willing to accept an ILO representative either based in the Regional Office in Bangkok or based in Geneva, to observe, assess or assist the national supervisory mechanism in the implementation of Convention 29 on Forced Labour.

## *Development at the 279th Meeting of the Governing Body*

At the 279th Meeting of the Governing Body of the ILO, in recognition of the efforts by Myanmar, Malaysia, on behalf of the ASEAN member states of the ILO namely Indonesia, Philippines, Singapore and Vietnam, made a joint statement urging the Governing Body to take into account the latest positive developments, and Myanmar and the ILO to continue cooperation and to remain engaged in finding a lasting and effective solution. The joint statement was supported by Sudan, Russia, China, India, Pakistan and Algeria. Malaysia as a Titular Member of the Governing Body, also tabled a counter draft

However, despite repeated requests by Malaysia, the Chairman of the Governing Body did not have the draft resolution circulated to all Members of the Governing Body. Nor did he put it to a vote and the Governing Body eventually decided that all measures adopted at the 88th ILC would take effect on 30 November 2000 as the Governing Body as a whole was not satisfied with the progress in Myanmar. Furthermore, the Chairman ended the meeting abruptly thereby depriving the members from delivering their statements explaining their positions after the vote.

The Myanmar observer delegation made an oral protest to the Director-General of the ILO against the unfair and improper conduct of the meeting. It also handed its undelivered statement to the Director-General of the ILO and transmitted to the Chairman of the Governing Body, and requested them that it be circulated as the official document of the ILO.

In the Statement, the Permanent Representative of Myanmar stated that as the Governing Body's decision is most unfair, unreasonable, unjust and is totally unacceptable, Myanmar delegation totally and categorically rejects the decision and dissociates itself from it and any activities and effects connected with it. Accordingly, Myanmar would cease to cooperate with the ILO in relations to the ILO Convention 29 and any activity connected to it.

Subsequently, the Permanent Representative of Myanmar also wrote a letter to the Chairman of the Governing Body, lodging a protest against the unfair and improper conduct of the Governing Body.

It is crystal clear that the present situation arose out of the attempts by some Western countries to exert undue pressure on Myanmar and isolate it.

The ILO Special Mission led by Mr. Francis Maupain, visited Myanmar from 17 to 19 May 2001. It resulted in the signing of the Understanding between the Myanmar Government and the ILO on the Modalities of an ILO Objective Assessment.

The Understanding which reached between the Government of Myanmar and the International Labour Office is to receive a High Level Team (HLT) to carry out an objective assessment of the practical implementation and actual impact of the framework of legislative, executive and administrative measures.

Accordingly, the High Level Team (HLT) led by the Right Honourable Sir Ninian Stephen, former Governor-General of Australia; Ms. Nieves Roldan-Confessor, Former Secretary of Labour and Employment of the Philippines; Mr. Kulatilaka Arthanayake Parinda Ranasinghe, Former Chief Justice of Sri Lanka; and Mr. Jerzy Makarczyk, Judge, European Court of Human Rights and Former Deputy Minister of Foreign Affairs of Poland visited Myanmar from 17 September to 6 October 2001.

The HLT carried out an objective assessment of the situation in Myanmar and has submitted a report to the 282nd Governing Body.

While in Yangon, the members of the High Level Team called on His Excellency Senior General Than Shwe, Chairman of the State Peace and Development Council on 5 October 2001 and His Excellency Lieutenant General Khin Nyunt, Secretary (1) of the State Peace and Development Council on 21 September 2001.

They met a number of Ministers and various governmental committees and NGOs.

The HLT conducted extensive field trips to various States and Division, i.e. Mon State, Kayin State, Northern Shan State and Taninthayi Division.

The HLT was allowed to use their own private chartered aircraft for their trips in the country and the government supplied hotel accommodations, meals and motor transport for them on such field trips.

While in various parts of the country, the HLT was given freedom of movement and free access to meet whoever person they would like to meet and wherever they would like to go. In so doing they met the members of the NLD party including Daw Aung San Suu Kyi, members of the Diplomatic Corps and UN Specialized Agencies in Yangon.

## *Report of the High Level Team to the 282nd Session of the ILO Governing Body*

In its report, the HLT stated that "the Government fully honoured its obligations under the Understanding on an ILO Objective Assessment not to interfere with the work of the HLT" and that it "expresses its appreciation of the excellent arrangements which had been made by the Government to assist it in the discharge of its mandate".

The HLT in its report mentioned that the special and unique value of these field trips was that they enabled the team members to conduct many random interviews, in the absence of Government representatives, with individuals in the streets of towns and villages, in private homes, in teashops and in other public places. It also reported that they enjoyed full freedom and none of their requests was turned down on the security grounds. It even mentioned that on a couple of occasions when ambushes had recently taken place, the authorities insisted on the presence of a military escort for its protection.

It also reported that "in contrast to the situation reported in 1998 by the Commission of Inquiry, the HLT found no indications of the current use of forced labour on civil infrastructure projects".

His Excellency U Mya Than, Permanent Representative of the Union of Myanmar also presented a statement. In his statement, the Permanent Representative acknowledged that the report is fairly balanced, forward-looking and quite constructive though there are some points which Myanmar

continuing to cooperate with the ILO in its efforts to resolve the issue of forced labour.

He also reiterated that Myanmar is not completely ruling out some form of ILO permanent representation.

After examination of the report of the High Level Team and deliberations, the Governing Body made conclusions on the issue. The salient points are as follows:-

(a) The Governing Body requests the Director-General to pursue the dialogue with Myanmar authorities to define modalities and parameters of continued and effective ILO representation in Myanmar;

(b) The Director-General should also continue to provide assistance to the authorities with regard to establishing a form of ombudsman;

(c) The Director-General has to report to the next session of the Governing Body depending on the progress or lack of progress on the issue, including the criminal proceedings in paragraph 28 of the report (Kon Heng incident), the Governing Body has to draw appropriate conclusion.

## *The ILO Team's recent visit to Myanmar*

As indicated earlier, the Permanent Representative of the Union of Myanmar, at the November 2001 Governing Body session, has stated that Myanmar is not completely ruling out some form of ILO representation in the country.

True to his words, and after careful consideration, Myanmar authorities invited the Director-General of the ILO to send an ILO Team to visit Myanmar to discuss the matters regarding the conclusions adopted by the 282nd session of the ILO Governing Body on Myanmar's observance of Convention 29.

Thus, the ILO Team led by Mr. Francis Maupain visited Myanmar from 19 to 22 February 2002.

## *Visit of the ILO Technical Cooperation Mission (TCM) in February 2002*

The latest development was the visit of a Technical Cooperation Mission led by Mr. Francis Maupain, Senior Adviser to the Director-General of the ILO from 19 to 25 February 2002. The purpose of the visit was to discuss and reach agreement on the format and modalities of possible ILO presence in Myanmar.

While in the country, the ILO Team met the Minister for Labour, the Deputy Minister for Foreign Affairs and officials from various Ministries and the Attorney-General's Office. The Myanmar officials and the ILO TCM held discussions on the format and modalities of the possible ILO presence in Myanmar.

In the course of the discussions, the ILO Team insisted on an ILO representation office in Yangon.

The Myanmar side, on the other hand, approached the discussions with a genuine desire to cooperate as much as possible with the ILO and the main topic in the talks was the issue of ILO presence in the country.

Previously, Myanmar had all along insisted that, while, she is not rejecting the idea of some form of ILO presence, it could be achieved by occasional visits by the ILO Teams either based in Bangkok or in Geneva.

Nonetheless, during the recent talks in Yangon, the Myanmar side expressed its readiness to accept the appointment of an ILO Liaison Officer in Myanmar. The Myanmar side was also prepared to work out the necessary modalities between the ILO and Myanmar as soon as possible.

However, the TCM insisted on the establishment of an ILO representation office in Myanmar rather than a Liaison Officer.

### *Myanmar's proposal for the appointment of an ILO Liaison Officer*

Myanmar has been following a step by step approach. Consistent with this approach and in keeping with the statements of the Myanmar representative, the Myanmar side has made the very significant and reasonable offer to accept the appointment of an ILO Liaison Officer in the country. This constitutes a major step forward which is unthinkable as recently as November 2001.

## Summary of the proceedings at the 283rd session of the ILO Governing Body

### *The signing of the Understanding between the Government of the Union of Myanmar and the ILO on the appointment of an ILO Liaison Officer in Myanmar*

A landmark agreement between the Government of the Union of Myanmar and the International Labour Office on an appointment of an ILO Liaison Officer in Myanmar was signed by Mr. Kari Tapiola, Executive Director of the International Labour Office and His Excellency Ambassador U Mya Than, Permanent Representative of the Permanent Mission of the Union of Myanmar at the ILO Headquarters on 19 March 2002.

Under the Understanding, the Government of the Union of Myanmar has agreed to the appointment of an ILO Liaison Officer in Myanmar by the Director-General of the ILO not later than June 2002. This will contribute to the further cooperation between the Government of the Union of Myanmar and the ILO.

This constitutes a breakthrough agreement in the history of cooperation between the Government of the Union of Myanmar and the ILO. It will go a long way in carrying forward the process of dialogue and cooperation between the two sides, and will contribute to, and assist in the efforts by the Government to ensure that there will be no instances of the use of forced labour in Myanmar.

*Deliberations at the 283rd session of the ILO Governing Body and the outcome of the meeting*

At the meeting of the Governing Body devoted to the question of Myanmar, Ambassador U Mya Than , Permanent Representative of Myanmar characterized the Understanding as a "landmark agreement". He reiterated that Myanmar was fully committed to the elimination of forced labour in Myanmar. He further explained the effective measures taken by the Myanmar to that end. He called upon the Governing Body, in the light of the aforementioned positive developments, to recommend to the 90th session of the ILC to place the item on its agenda, and to review the situation with the view to removing all the measures, taken by the ILO against Myanmar under the Article 33 of the ILO Constitution.

This request was formally tabled to the Governing Body by the representative of Malaysia in a joint statement by the ASEAN member states and Sudan, Bangladesh. A number of other Government representatives including Japan, India, Pakistan, China, Libya, Republic of Korea, Australia, New Zealand, US, EU, Switzerland, Chief Workers' delegate and Chief employers' delegate also welcomed the important steps taken by Myanmar Government by signing the aforementioned Understanding with the ILO.

Following constructive discussions on the question, the Chairman on behalf of the Governing Body, made a summing up. The Governing Body, inter alia:-

- welcomed the signing of the Understanding between the Government of Myanmar and the ILO for the appointment by June 2002 of an Liaison Officer in Myanmar.

- recognized that this discussion of the proposal by the ASEAN Member States to place the item on Myanmar on the agenda of the 90$^{th}$ ILC and to review the situation with a view to removing any measures taken against Myanmar under Article 33 of the Constitution of the ILO constituted the first discussion of the question; and

- decided that the Governing Body could return to the question at its 285$^{th}$ session in November 2002.

It is hoped that this positive outcome of the 283rd session of the Governing Body will pave the way for further cooperation between Myanmar and the ILO and will eventually lead to the lifting of all the sanctions taken by the ILO against Myanmar under the Article 33 of the ILO Constitution.

## Developments in the field of human rights

The Government of Myanmar has shown its commitment to improve the cooperation with the United Nations by accepting the Special Envoy of the UN Secretary-General, Mr. Razali Ismail and the Special Rapporteur of the United Nations Human Rights Commission, Professor Paulo Sergio Pinheiro to visit Myanmar.

The UN Special Envoy Mr. Razali Ismail made a seventh visit to Myanmar in January 2002 since he was appointed as the Special Envoy in April 2000. Regarding his recent visit, a statement was issued by the United Nations by which it stated that he was hopeful that some significant progress could be achieved in the near future in the talks of national reconciliation.

Mr. Razali has also taken a role to assess the level of cooperation between the government and national groups who returned to the legal fold during the late 1980s. He travelled to the border areas in Shan State during his visit and met with the leaders of ethnically based political parties.

During the past one year, a significant progress in cooperation with the Human Rights Commission has been made when the Special Rapporteur of the Human Rights Commission, Professor Paulo Sergio Pinheiro visited Myanmar in April 2001. The Government of Myanmar has accepted the visit of the Special Rapporteur for the first time in six years and fully cooperated with him to the extent possible in order to inform the international community the real situation in the country. He submitted a fairly balanced report to the Commission.

After his visit to Myanmar for the second time in October 2001, Professor Pinheiro submitted a report to the UNGA. In his report, it was mentioned that he received full and unhindered cooperation on the part of the Myanmar Government during his mission. He commented in his report that since the ongoing confidence-building contacts between the State Peace and Development Council and the leader of the NLD during the last twelve months, the Government of Myanmar is trying to address several of the human rights concerns of the Commission on Human Rights and to support several positive initiatives. Those include the dissemination of human rights standards for the police and public officials through a series of training workshops with the support of the Australian Government and cooperate funding; the establishment of the governmental Committee on Human Rights to pave the way for the establishment of a human rights institution based on the Paris Principles; the releases of political detainees; the better conditions in the prisons.

Mr. Paulo Sergio Pinheiro, visited Myanmar, third time in a year, from 10 to 19 February 2002. During his visit, Mr. Pinheiro held meeting with Lt. Gen. Khin Nyunt, Secretary 1 of the State Peace and Development Council and senior officials of the Government, judicial authorities, religious dignitaries and responsible persons from the Human Rights Committee. He visited the Kachin State where he had a chance to meet the local people freely. He met with Daw Aung San Suu Kyi. According to the news, Mr. Pinheiro said that he was given unfettered access to political prisoners and had impression that there's no abuse against those he interviewed. He said that the detainees in Myanmar face improved prison conditions after 150 missions by the International Committee of the Red Cross (ICRC). When he met with the reporters in Bangkok on 22 February 2002, the United Nations Human Rights Envoy called for the world to forge a "principled" engagement with the Government of Myanmar.

The Special Rapporteur will deliver his report at the fifty-eighth session of the Human Rights Commission in March 2002.

As a gesture of goodwill, the Government has released altogether 246 persons till 15 March 2002. They were being held with the intent to maintain peace and stability in the country and for their transgression of laws. There are also several other detainees being released from time to time from various correctional facilities but are not included in the release list.

As at 21 March 2002, altogether 318 female detainees with young children and mothers-to-be charged and detained for various criminal activities were being granted amnesty and released from various correctional facilities.

## *Religious tolerance*

Myanmar is a predominantly Buddhist country as nearly ninety percent of its population of over 48 million are Buddhists. Understandably, those citizen of other faiths may be concerned about possible persecution or intolerance by another faith which is dominant. This concern, which is without reason, has been exploited by some for their own political motivation. Based on this misinformation, allegations on religious intolerance in Myanmar were deliberately made to mislead the public opinion of the international community.

Nothing can be further from the truth. As a matter of fact, religious harmony and freedom in Myanmar is well known to the outside world. The Government of the Union of Myanmar fully believes the importance of religious freedom in a multi-racial country like Myanmar and gives equal treatment to all the religions in the country. Our previous two Constitutions provided for safeguards against religious discrimination and religious intolerance. Similarly, the fundamental principles we have agreed upon in the National Convention process guarantee religious indiscrimination and religious tolerance.

As religious harmony and freedom in the country is a tradition shared by all faiths, the Government has taken all necessary steps to encourage this prevailing harmony. This is done by continuous contacts with the respective religious leaderships and providing necessary assistance in both financial and material terms in order that they may be able to promote their faiths effectively.

The Government is determined to promote and protect, to the best of its ability, all the religions in the country and help all religious groups in all possible ways to co-exist harmoniously with each other.

## *The right to development*

The most fundamental and essential requirement for a country like Myanmar is to fulfill the basic needs of the people---food, clothing and shelter and also to raise their standard of living. Other aspects of human rights cannot be effectively implemented without fulfilling these basic rights. Civil and political rights are important but the Myanmar people believes that economic, social and cultural rights are equally important.

With this belief, the Government is making efforts for the advancement of economic and social conditions in the country where peace and tranquillity prevail currently. A transition from a socialist economy to an open-market one was made and the private sector plays the major component of the market system. It has led the achievement of sustained economic growth for the country over the past several years. Myanmar achieved an average annual growth rate of 8.4 percent against the original target of 6 percent in its five-year plan from 1996-1997 to 2000-2001. During the plan period, total investment also increased by an annual growth rate of 31.6 percent. This was achieved entirely by the country's own resources and foreign direct investment, without the benefit of ODA (Official Development Assistance) and concessional loans.

For the sustained development of the country, an adequate infrastructure is a pre-requisite and the Government is focusing its efforts on infrastructure development. The Government has completed to-date 170 bridges including 9 major river-crossing bridges, 129 dams, 120 hospitals, 112 universities and colleges, 6223 new basic education schools, 4239 miles of road, 998 miles of new railroads, and 6 new airports to mention just a few statistics and also border area development on an unprecedented scale for national races living in frontier areas.

Another sector to which the Government is paying particular attention is the agriculture sector. This sector accounts for the 42 percent of GDP, 40 percent of total exports and employs 65 percent of total labour force. Therefore, economic sector occupies a place of importance in Myanmar economy. With a favourable ratio of population to land, and abundant water resource, topographical conditions and natural resources, it is also an area Myanmar has a marked comparative advantage. For this, the first of the four national economic objectives of the Government is the development of agriculture, the base for all-round development of other sectors of the

With the aim of promoting the agriculture sector, the Government has laid down five strategic measures under which it is carrying out the programme of extensive land reclamation in wet land and virgin land, and granting large land holding to private companies. As a result, the private sector has added 1.1 million acres to the existing arable land. To provide sufficient water, new reservoirs and dams were constructed. The aim of the Government is to increase its rice export and to contribute to food supply both domestically and regionally.

## *Rights of the child and the status of women*

To upgrade the standards of health, education and fitness, the Government has laid down its social objectives accordingly and relevant ministries are working toward the successful realization of these objectives.

The Government believes that in order to uplift the morality of the country, the rights of women and children must be protected and further promoted as these groups form the most vuinerable groups. To reach this goal is to work within the framework of the UN system and accordingly Myanmar became State party to the UN Convention on the Rights of the Child in 1991 and in 1997 acceded to the UN Convention on the Elimination of All Forms of Discrimination Against Women. The initial reports were already submitted to the respective committees. These measures clearly demonstrate the importance the Government attaches to the welfare of women and children of the nation.

The Child Law was promulgated in 1993 and the National Committee on the Rights of the Child was formed to effectively implement the provisions of the Law. Apart from it, Committees on the Rights of the Child were also formed in State, Division and District levels. Juvenile courts were established and township judges were conferred as Juvenile Judges in areas where no such courts were established yet. The departments of health, basic education and social welfare have carried out the programmes of action in collaboration with the UNICEF.

Though there are constraints in carrying out the task of implementing the Convention fully and the fact was mentioned in the National Report of Myanmar to the Committee on the Rights of the Child, the Government of Myanmar is doing its utmost to overcome the difficulties on its own resources.

The Myanmar women have played an important role in many aspects of the country, but the most prominent movement is in social work. They have taken part in enriching and enhancing individual and group development or at promoting social and economic conditions. In the area of promotion and protection of rights of women, the Government has also assumed a leading role for the advancement of women and the Myanmar National Committee for Women Affairs (MNCWA) was formed in 1996.

The Myanmar National Working Committee for Women Affairs (MNWCWA) was subsequently formed to implement the developmental activities for women systematically. This Committee holds meetings every three months and visits various townships throughout the country in order to implement the Plan of Actions. The formation of MNWCWA was followed by the formation of State, Division, District and Township (grass-roots level) working committees for women's affairs. The working committee has identified nine critical areas of concern for the advancement of Myanmar women and they are as follows:-

1) Education - The main objective of this area is to promote the enrollment retention and completion of primary education of girls. One of the activities that is being implemented to achieve this objective is to support needy students.

2) Health - The sub-committee stresses the promotion of family health and also strengthened the Essential Obstetric-care services.

3) Violence Against Women - Although it is not a major issue in Myanmar, the working committee decided to address this issue as it can hinder women's advancement. Counselling centres to give services to the victims of marital violence have been established. A task force for trafficking in women and a group receiving communications directly from the victims are set up to combat violence against women effectively.

4) Women and Economy - This sub-committee implement activities such as skill-based or vocational training in non-traditional modern technology to gain easy access to employment. Small loans are given to women casual sellers in the markets.

5) Women and Culture - To preserve cultural heritage talks on national heroes, tradition, customs and religion are conducted, with the co-operation of schools and community leaders.

6) Women and Environment - Women have actively participated in environmental conservation.

7) Women and Media - National media are used to enhance the awareness of the women's role and contributions to the family, community and country and more women are involved in the management of the media.

8) The Girl-Child - Although there is no discrimination against the girl-child, the committee implements activities to promote the advancement of the target group.

9) International relations – To inform the international community of the efforts of Myanmar National Committee for Women's Affairs for the promotion of inborn rights of Myanmar women.

Under its auspices, the First and Second Myanmar Women Conferences were held in December 1998 and January 2001 with the aim to develop the life of women in Myanmar. Plan of Actions to bring about interests of women in Myanmar was adopted by the Conference.

The Regional Consultation on Violence against Women and the Role of Health Sector was held in Yangon in early 1999 as the issue of violence against women is of major concern of the world community.

Because of the unique culture , tradition and practice of the society in Myanmar, violence against women is not a major issue in the country. Nevertheless, surveys and research projects are launched in the country in order to obtain more data on this subject. Discussions and seminars on violence against women are held in various townships and counselling is also made available to the women in need of such service.

Lady officials of Myanmar also participated in Beijing Conference, UNGASS (Beijing +5) and ASEAN meetings to exchange experience and knowledge in the field of women issues. In short, the role of Myanmar women plays an important part in the national development process.

Apart from this National Machinery, the NGOs have played a major role in alleviating social and economic conditions. There are many women's organizations and among them are Myanmar Maternal and Child Welfare Association (MMCWA), the Myanmar Women's Sports Federation (MWSF), the Women chapter of the Myanmar Medical Association (WCMMA) and the Myanmar Women Entrepreneurs Association (MWEA) to name a few. These NGOs are working together with the National Committee for the advancement of women. The Government renders assistance to them in order that they may be able to carry out their programmes more efficiently.

The Myanmar Maternal and Child Welfare Association (MMCWA), the country's largest non-governmental organization with branches and associations all over the country has been working closely with the Government to promote the health and well-being of mothers and children.

The Association is actively playing a leading role in the following sectors such as catering to the health of mothers and children in urban and rural areas, reducing maternal and infant death rates, conducting training in breast feeding, taking part in National Immunization Day activities, birth spacing projects and taking control measures for AIDS, prevention of iodine deficiency and providing health care services. These could be seen as important activities concerning women and children. The Association also aided the officials of the Health Ministry to draw health plan. The Association received the WHO award for outstanding performance on primary health care.

The Myanmar Women Entrepreneurs Association is also active in enhancing the role of the Myanmar women. It is implementing income-generating programmes for rural women and give small loans to women who run small-scaled, home-based industry.

The Myanmar Women Sports Federation promotes the participation of women in sports as well as the development of women physically, mentally and morally. The Myanmar women have acclaimed outstanding achievements at international competitions.

## Conclusion

The Government of Myanmar is committed to the establishment of a democratic political system and taking steps towards the achievement of that goal. At the same time, the Government is making every effort to improve the overall situation of the country in spite of various constraints and obstacles and undue international political pressures. The fact that peace and stability is now prevailing in areas where insurgencies were wide-spread in the past and the fact that the Government has accomplished many achievements on the political, economic, social and cultural fronts, attest to the measure of the success of the Government's endeavours.

Consideration of the situation of human rights in Myanmar without fully taking into account all aspects of the difficulties, confronted by Myanmar in its transition to a new political system, and the concrete achievements of the Government in many areas, outlined above, will not be fair and balanced by any standards. It is, therefore, hoped that draft resolution on the situation of human rights in Myanmar this year will faithfully reflect the objective situation in the country and the positive measures taken by the Government in a fair and balanced manner.

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